

Case No. 81390

**In the Supreme Court of Nevada**

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

*vs.*

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,  
Husband and wife, as joint tenants; ROBERT  
Z. DISMAN; and YVONNE A. DISMAN,  
Respondents.

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**APPEAL**

from the Eighth Judicial District Court, Clark County  
The Honorable TIMOTHY C. WILLIAMS, District Judge  
District Court Case Nos. A-16-747800-C and A-17-765372-C

**APPELLANTS' APPENDIX  
VOLUME 3  
PAGES 501-750**

JOEL D. HENRIOD (SBN 8492)  
DANIEL F. POLSENBERG (SBN 2376)  
DAN R. WAITE (SBN 4078)  
LEWIS ROCA ROTHGERBER CHRISTIE LLP  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
(702) 949-8200  
*Attorneys for Appellants*

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## CERTIFICATE OF SERVICE

I certify that on March 15, 2021, I submitted the foregoing “Appellants’ Appendix” for filing *via* the Court’s eFlex electronic filing system.

Electronic notification will be sent to the following:

Kevin B. Christensen  
Wesley J. Smith  
CHRISTENSEN JAMES & MARTIN  
7740 W. Sahara Avenue  
Las Vegas, Nevada 89117

Christina H. Wang  
FIDELITY NATIONAL LAW GROUP  
8363 W. Sunset Road, Suite 120  
Las Vegas, Nevada 89113

*Attorneys for Respondents Robert Z.  
Disman and Yvonne A. Disman*

*Attorneys for Respondents September  
Trust, dated March 23, 1972, Gerry R.  
Zobrist and Jolin G. Zobrist, as trus-  
tees of the Gerry R. Zobrist and Jolin  
G. Zobrist Family Trust, Raynaldo G.  
Sandoval and Julie Marie Sandoval  
Gegen, as trustees of the Raynaldo G.  
and Evelyn A. Sandoval Joint Living  
and Devolution Trust dated May 27,  
1992, and Dennis A. Gegen and Julie  
S. Gegen, husband and wife, as joint  
tenants*

/s/ Emily D. Kapolnai  
An Employee of Lewis Roca Rothgerber Christie LLP

2. "Summary Judgment is appropriate and shall be rendered forthwith when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to judgment as a matter of law.'" Wood v. Safeway, 121 Nev. Adv. Op. 73, 121 P.3d, 1026, 1029 (2005)(quoting NRCP 56(c)).

3. In Wood, the Nevada Supreme Court rejected the "slightest doubt" standard from Nevada's prior summary judgment jurisprudence, Id. at 1037, and adopted the summary judgment standard which had been articulated by the United States Supreme Court in its 1986 Trilogy: Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); and Matsushita Electrical Industrial Company v. Zenith Radio Corporation, 475 U.S. 574 (1986). The application of the standard requires the non-moving party to respond to the motion by "Set[ting] forth specific facts demonstrating existence of a genuine issue for trial." Wood, 121 p.3d at 1031. This obligation extends to every element of every claim made, and where there is a failure as to any element of a claim, summary judgment is proper. Barnettler v. Reno Air, Inc., 114 Nevada 441, 447, 956, P2d. 1382, 1386 (1998). In this case, the Association failed to oppose the Motion for Summary Judgment and failed to appear for the hearing thereon, which was a general failing to present any facts demonstrating the existence of a genuine issue for trial.

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

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

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

#### **B. Summary Judgment Is Proper As To Plaintiff's Declaratory Relief Cause of Action**

5. A declaratory relief cause of action is proper where a conflict has arisen between the litigating parties, and the action is brought to establish the rights of the parties. 26 C.J.S. Declaratory Judgments § 1.

6. The Lyles' Seventh Cause of Action seeks Declaratory Relief and assumes, therein, that the Amended CC&Rs are void *ab initio*, as they indeed are.<sup>1</sup> See First Amended Complaint ("FAC"), ¶¶ 32 – 39. Specifically, the Lyles seek this Court to declare that the Liens based on the assessments at issue are invalid because they were based on the Amended CC&Rs, which were void *ab initio* -- meaning that there was never any right prescribed by the Amended CC&Rs as they were void from their inception and recording.

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

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

### C. Summary Judgment Is Granted As To The Quiet Title Cause Of Action

9. A plaintiff may bring a quiet title cause of action and must allege (1) the plaintiff has an interest in real property, and (2) the defendant claims an interest adverse to that of plaintiff. Twain Harte Homeowners Assn. v. Patterson, 239 Cal.Rptr. 316 (1987), South Shore Land Co. v. Petersen, 38 Cal.Rptr. 392 (1964), Thornton v. Stevenson, 8 Cal.Rptr. 603 (1960).

10. The Plaintiff's Fourth Cause of Action is for Quiet Title and alleges that the liens described herein "were recorded without any right and for invalid reasons as set forth herein, and the lien presently recorded against the property impairs and clouds Plaintiff's title to Plaintiff's Property."

<sup>1</sup> Plaintiff believes that a determination as to the Seventh Cause of Action first, which alleges that the liens are void *ab initio* and must be revoked because the District Court already has determined that the Amended CC&Rs are void *ab initio* is the appropriate starting point for the Court's determination of this matter.

11. "A cloud on title is described as any outstanding instrument, record, claim, or encumbrance which is actually invalid or inoperative but which may nevertheless impair the title to property." 53 Cal. Jur. 3d Quieting Title § 15. "Actions to determine the continuing validity of a restrictive covenant are normally brought either as an action for a declaratory judgment or an action to quiet title.

12. Where the action is one to quiet title, it is necessary to show that the plaintiff holds title to the property in question and that there is 'cloud' upon the title, or, in other words, that a hostile claim is outstanding. 27 Causes of Action 203, §§ 5, 25 (2012), see also Cortese v United States, 782 F.2d 845 (9th Cir Cal 1986); Garnick v Serewitch, 39 NJ Super 486, 121 A.2d 423 (1956); 65 Am. Jur. 2d, *Quieting Title and Determination of Adverse Claims* §§ 9-17; C.J.S., Quieting Title §§ 58-66.

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

**D. Summary Judgment Is Granted As To The Injunctive Relief Cause Of Action**

14. Plaintiff's Fifth Cause of Action alleges that "Plaintiff is entitled to a preliminary and permanent mandatory injunction ordering the Association not to foreclose on the first lien recorded on Plaintiff's Property on July 20, 2009, pending final resolution of the within litigation."

15. As set forth above, all liens, including the first lien, are void *ab initio* and are illegitimate. Therefore, no foreclosure action may be pursued to enforce the liens, and summary judgment is proper as to Fifth Cause of Action for injunctive relief.

**E. Summary Judgment Is Granted As To The Slander Of Title Cause Of Action**

16. "Slander of title involves false and malicious communications that disparage a person's title in land and cause special damages." Higgins v. Higgins, 103 Nev. 443, 445, 744 P.2d 530, 531 (1987).

17. An award of expenses, including attorneys' fees, incurred in removing a cloud on title is proper. Summa Corp. v. Greenspun, 98 Nev. 528, 532, 655 P.2d 513, 515 (1982).

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1           18.     “Malice” has been defined as “knowledge that it [a statement] was false or with  
2 reckless disregard of whether it was false or not.” New York Times Co. v. Sullivan, 376 U.S. 254,  
3 279-80 (1964). Reckless disregard means that the publisher of the statement acted with a “ ‘high  
4 degree of awareness of ... [the] probable falsity’ ” of the statement or had serious doubts as to the  
5 publication's truth.” *Id.* at 280.

6           19.     Plaintiff's Third Cause of Action alleges slander of title against the Association as a  
7 result of the Association's recording the First and Second Liens.

8           20.     The Association knew or should have known that it had no right to issue assessments  
9 against Plaintiff and knew or should have known that the bond posted by Plaintiff adequately  
10 covered the Association's lien on Plaintiff's Property and therefore the Association acted  
11 maliciously or in reckless disregard of the falsity of the lien by recording the lien on the Property and  
12 refusing to remove the same up through the present date.

13           21.     Further, the recordation by the Association of the Third Lien constitutes slander of  
14 title to Plaintiff's Property as the Association and its Board members knew or should have known  
15 that they had no legal right to record the lien as the amount of lien had not been adjudicated by any  
16 court, arbitrator or arbiter and therefore the Association and/or its Board members acted with malice  
17 and/or with reckless disregard of the falsity of the lien.

18           22.     This Court already found that the Association had no lawful right to record and  
19 enforce the Amended CC&Rs. As such, the Amended CC&Rs were declared void *ab initio*.  
20 Similarly, the First and Second Liens, and all other liens recorded against Plaintiff's Property are  
21 void *ab initio* because they were born from the Amended CC&Rs. Thus, the falsity of the liens is  
22 clearly established.

23           23.     In addition to being false, the Association's actions were malicious because the  
24 Association recorded the liens with reckless disregard for the integrity of those liens.

25           24.     The July 2007 amendment meeting and the actions that preceded that meeting to  
26 perpetrate the fraud of the Amended CC&Rs and post-meeting actions in recording the Amended  
27 CC&Rs were fraudulent. The Association's Board, at that time, pushed the Amended CC&Rs  
28 through an improperly noticed meeting wherein homeowners were provided with written

1 misrepresentations, insufficient time to consider and debate the proposed amendment, and then,  
2 despite all of these problems, the Association's Board still recorded the Amended CC&RS without  
3 the required unanimous consent. The process was reckless and malicious and aimed at the Lyles,  
4 who were the only undeveloped lot at the time, from building their dream home.

5 25. Once the Amended CC&Rs were improperly recorded, the Association, again acting  
6 in disregard for Plaintiff's rights, recorded liens against Plaintiff's Property and swiftly moved to  
7 foreclose against the First Lien.

8 26. As a result of the Association's actions, as set forth herein and as established by the  
9 record in Case No. A-09-593497-C, the Association's actions were malicious.

10 27. Therefore, summary judgment as to Plaintiff's Third Cause of Action for Slander of  
11 Title is appropriate.

12 **F. The Liens Are Invalid Because The Association Did Not Adopt An Annual Budget**

13 28. The Association's Board failed to adopt an annual budget in violation of NRS §  
14 116.3115. Assessments may not be imposed if they are not done so based on an annual budget  
15 prepared by the Board. NRS 116.3115, see also Bylaws, Sections 8.1 and 8.2.

16 29. The Association failed to adopt a budget in either 2009 or 2010, as required under  
17 Article 10, Section 10.4 of the Amended CC&Rs and Article VIII, Section 8.1 and 8.2 of the  
18 Bylaws.

19 30. As set forth in NRS 116.3115 and in the Association's own amended governing  
20 documents (since revoked but in place at the time of the assessments in question), an annual budget  
21 is required in order to impose assessments.

22 ///

23 ///

24 ///

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26 ///

27 ///

28 ///

**G. The Liens Are Invalid Because The Association Failed To Provide Requisite Notice  
And A Hearing Prior To Levying The Assessments And Recording The Liens  
Against The Property**

31. NRS 116.31162(1)(2) provides as follows:

1. Except as otherwise provided in subsection 5, 6 or 7, in a condominium, in a planned community, in a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, or in a cooperative where the owner's interest in a unit is personal property under NRS 116.1105 and the declaration provides that a lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the association may foreclose its lien by sale after all of the following occur:

(a) The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest, at his or her address, if known, and at the address of the unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due in accordance with subsection 1 of NRS 116.3116, a description of the unit against which the lien is imposed and the name of the record owner of the unit.

32. Plaintiff never received any required statutory notice from the Association or anyone acting on its behalf of the delinquent assessment and other sums allegedly due that served as the basis for the First Lien.

33. Thus, the First Lien, even if the basis for that lien were valid, which they are not, is procedurally defective.

**H. The Association's Collection Agency Was Never Properly Authorized**

34. NRS 116.31086 requires the Association to obtain three (3) bids before hiring a collection agent, in this case NAS.

35. No bids were collected, and no meeting took place during which NAS was appointed as the Association's collection agent.

36. Yet, despite not being lawfully engaged and authorized, NAS recorded the First Lien on the Lytle Property and pursued collection and foreclosure. This was improper.

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**I. Plaintiff Suffered Damages**

37. NRS 116.1183 provides as follows:

1. An executive board, a member of an executive board, a community manager or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:

(a) Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association;

(b) Recommended the selection or replacement of an attorney, community manager or vendor; or

(c) Requested in good faith to review the books, records or other papers of the association.

2. In addition to any other remedy provided by law, upon a violation of this section, a unit's owner may bring a separate action to recover:

(a) Compensatory damages; and

(b) Attorney's fees and costs of bringing the separate action.

[Emphasis added].

38. Plaintiff presented adequate evidence that it suffered damages as a result of the Board's retaliatory actions.

39. Plaintiff planned to build a dream home in the community, and the actions taken by the Board were intentionally and directly targeted at Allen and Trudi Lytle in order to prevent them from ever moving into the community.

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

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

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

///

43. The Association's retaliatory actions cost the Lytles their dream home. These actions further entitle Plaintiff to attorneys' fees incurred in this action, the underlying arbitration, and appeal in this action.

**J. Plaintiff Is Entitled To Punitive Damages**

44. A wronged plaintiff may recover punitive damages in an action for slander of title. Summa Corp. v. Greenspun, 98 Nev. 528, 655 P.2d 513 (1982).

45. Once more, the plaintiff need not show that the land was adversely affected. Id. at 531. Actual damages in the form of costs to remove the cloud on title, such as attorneys' fees, is sufficient. Id.

46. The Association, through its Board, recorded three (3) improper and unlawful liens against Plaintiff's Property. Once more, each lien incorporated the prior lien amount, reaching a total of \$209,883.19, when the only amount that had been adjudicated was \$52,255.19, when there was a bond posted in that amount which was deemed, by the Association, as good and sufficient.

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

48. The totality of the liens made it impossible for Plaintiff to sell the Property, even though a good and sufficient bond had been deposited.

49. The Association's actions were taken in order to prevent the Lytles from building their dream home in the community.

50. Pursuant to the foregoing, Plaintiff is entitled to punitive damages in an amount to be determined after a prove-up hearing on damages.

**K. Plaintiff Is Entitled To An Award Of Damages Equal To Its Costs And Attorneys'**

**Fees Incurred In Removing The Cloud On Title**

51. A plaintiff can recover its costs and attorneys' fees as damages in an action for slander of title. See generally Summa Corp., 98 Nev. 528, 655 P.2d 513.

52. Plaintiff is directed to submit a memorandum of costs and application for attorneys' fees.

///

1 **L. Summary Judgment Is Granted Against The Associations' Counterclaim**

2 53. The Association's Counterclaim merely seeks to enforce actions taken against the  
3 Lytles via the Amended CC&Rs, which are *void ab initio* as set forth herein. For the reasons set  
4 forth herein and the legal authority cited, all fines, assessments and liens are void *ab initio* and  
5 should be declared as such.

6 **III. JUDGMENT**

7 **IT IS HEREBY ADJUDGED AND DECREED:**

8 1. All liens recorded by the Association against Plaintiff's Property are invalid and have  
9 no force and effect. This Order may be recorded in the Office of the Clark County Recorder's  
10 Office by any party, and, once recorded, shall be sufficient notice of the same.

11 2. The Association is hereby ordered to release any and all liens recorded against the  
12 Property within sixty (60) days of the date of service of this Order on the Association, including (a)  
13 the Notice of Delinquent Assessment Lien, Book/Instr. No. 20090720-001631, and (b) the  
14 Judgment, Book/Instr. No. 200911180005345.

15 3. The Association's Counterclaim is dismissed.

16 4. Plaintiff is the prevailing party in this action. Plaintiff is directed to prepare, file and  
17 serve a Memorandum of Costs.

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1           5.       Plaintiff is deemed the prevailing party in this action. Any motion for attorneys' fees  
2 will be addressed separately by the Court.

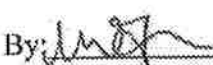
3  
4 IT IS SO ORDERED this 14 day of November, 2016.

5  
6   
7 HONORABLE ROB BARE  
8 District Court Judge, Dept. XXXII

9 ROB BARE  
10 JUDGE, DISTRICT COURT, DEPARTMENT 32

11 DATED: November 10, 2016

12 GIBBS GIDEN LOCHER TURNER  
13 SENET & WITTBRODT LLP

14 By:  #12490  
15 Richard E. Haskin, Esq.  
16 Nevada State Bar # 11592  
17 1140 N. Town Center Drive, Suite 300  
18 Las Vegas, Nevada 89144-0596  
19 Attorneys for Plaintiffs and Counterdefendants  
20 JOHN ALLEN LYTLE and TRUDI LYTLE  
21  
22  
23  
24  
25  
26  
27  
28

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

# EXHIBIT “M”

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CLERK OF THE COURT

1 **OGM**

2 Richard E. Haskin, Esq.  
3 Nevada State Bar # 11592

4 **GIBBS GIDEN LOCHER TURNER**  
5 **SENET & WITTBRODT LLP**

6 1140 N. Town Center Drive, Suite 300  
7 Las Vegas, Nevada 89144-0596  
8 Telephone: (702) 836-9800  
9 E-mail: rhaskin@gibbsgiden.com

10 Attorneys for Plaintiffs  
11 JOHN ALLEN LYTLE and  
12 TRUDI LEE LYTLE

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

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

17 Plaintiffs,

18 v.

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

22 Defendants.

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

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

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

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

26 Counterclaimants,

27 v.

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

Counterdefendants.

On March 21, 2017, Plaintiffs John Allen Lytle and Trudi Lee Lytle ("Plaintiffs") Motion for Attorneys' Fees came on regularly for hearing, the Honorable Rob Bare presiding. Plaintiffs appeared through counsel, Richard E. Haskin, Esq. of Gibbs Giden Locher Turner, Senet & Wittbrodt, LLP. There was no appearance for Defendant Rosemere Estates Property Owners'

APR 12 2017

1 Association ("Defendant"). Defendant did not file an opposition to the Motion and did not make an  
 2 appearance at the hearing. Having considered the Motion, the arguments of counsel, the pleadings  
 3 and papers on file herein, and good cause appearing therefore, the Court finds:

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

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

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

12 25. Attorney's Fees: In any legal or equitable proceeding for the  
 13 enforcement of or to restrain the violation of the Declaration of Covenants,  
 14 Conditions and Restrictions or any provision thereof, the losing party or  
 parties shall pay in such amount as may be fixed by the court in such  
 proceeding.

15 See Original CC&Rs, ¶¶ 24, 25.

16 3. Plaintiffs prevailed in this action, and the Court granted Plaintiffs' motion for  
 17 summary judgment, in its entirety, declaring all of the liens against Plaintiffs' property were  
 18 wrongfully recorded and slandered the Plaintiffs' property. Accordingly, Plaintiffs are entitled to an  
 19 award of attorney fees, pursuant to the terms of the Original CC&Rs.

20 4. Further, the Amended CC&Rs also contain a mandatory fee shifting provision  
 21 entitling Plaintiffs to an award of attorney fees. As provided in the Amended CC&Rs, Section  
 22 16.1(a):

23 16.1(a) In the event the Association, or any Owner shall commence  
 24 litigation or arbitration to enforce any of the covenants, conditions,  
 25 restrictions or reservations contained in the Governing Documents, the  
 26 prevailing party in such litigation or arbitration shall be entitled to  
 costs of suit and such attorney's fees as the Court or arbitrator may  
 adjudge reasonable and proper.

27 See Amended CC&Rs, § 16.1(a).

28 ///

5. A litigant can recover attorneys' fees when a contract, such as the Amended CC&Rs, is held unenforceable. *Mackintosh v. California Federal Sav. & Loan Ass'n* (1997) 113 Nev. 393, 405-406, 935 P.2d 1154, 1162.

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

1. Subject to the requirements set forth in subsection 2, if a declarant, community manager or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons suffering actual damages from the failure to comply may bring a civil action for damages or other appropriate relief. . .

4. The court may award reasonable attorney's fees to the prevailing party.

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

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

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

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

///

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


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

5 Therefore,

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

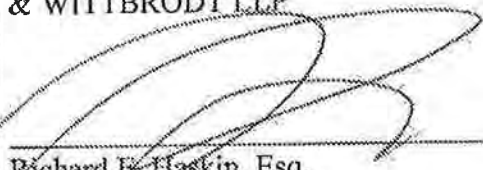
7 IT IS FURTHER ORDERED that Plaintiffs are awarded \$274,608.28 in attorneys' fees and  
8 \$4,725.00 in costs as against Defendant.

9  
10 DATED this 14 day of April, 2017.

11  
12   
13 HONORABLE ROB BARE  
14 DISTRICT COURT JUDGE

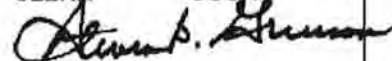
15  
16 Submitted by:

17 GIBBS GIDEN LOCHER TURNER, SENET  
18 & WITTBRODT LLP

19   
20 Richard E. Haskin, Esq.  
21 Nevada State Bar # 11592  
22 1140 N. Town Center Drive, Suite 300  
23 Las Vegas, Nevada 89144  
24 Attorneys for Plaintiffs  
25 JOHN ALLEN LYTLE and  
26 TRUDI LEE LYTLE  
27  
28

# EXHIBIT “N”

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Steven D. Grierson  
CLERK OF THE COURT



1 **OGM**  
Richard E. Haskin, Esq.  
2 Nevada State Bar # 11592  
3 **GIBBS GIDEN LOCHER TURNER**  
**SENET & WITTBRODT LLP**  
1140 N. Town Center Drive, Suite 300  
4 Las Vegas, Nevada 89144-0596  
Telephone: (702) 836-9800  
5 E-mail: rhaskin@gibbsgiden.com

6 Attorneys for Plaintiffs  
JOHN ALLEN LYTLE and  
7 TRUDI LEE LYTLE

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

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

12 Plaintiffs,

13 v.

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

15 Defendants.

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

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

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

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

20 Counterclaimants,

21 v.

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

23 Counterdefendants.  
24

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

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

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

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

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

20 4. The Association, through its Board, recorded three (3) improper and unlawful liens  
21 against Plaintiff's Property. Each lien incorporated the prior lien amount, reaching a total of  
22 \$209,883.19, when the only amount that had been adjudicated and could possibly be subject to lien,  
23 if at all, was \$52,255.19. With respect to this amount, Plaintiffs posted a bond in that amount which  
24 was deemed, by the Association, as good and sufficient. Hence, any lien was unnecessary.

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

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

28 ///

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

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

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

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

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

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

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

18           14.    The Court previously found and awarded attorneys' fees in the amount of  
19 \$274,608.28.

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1 Therefore,

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


4  
5 DATED this 11 day of May, 2017.

6  
7  
8   
HONORABLE ROB BARE  
DISTRICT COURT JUDGE

9 ROB BARE  
JUDGE, DISTRICT COURT, DEPARTMENT 17

10  
11 Submitted by:

12 GIBBS GIDEN LOCHER TURNER, SENET  
13 & WITTBRODT LLP

14  
15   
16 Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
17 1140 N. Town Center Drive, Suite 300  
Las Vegas, Nevada 89144  
18 Attorneys for Plaintiffs  
JOHN ALLEN LYTLE and  
19 TRUDI LEE LYTLE

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

# EXHIBIT “O”

Attorneys for Plaintiff  
JOHN ALLEN LYTLE and TRUDI LEE  
LYTLE

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Plaintiff,

V.

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

Defendants.

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

## COMPLAINT FOR DECLARATORY RELIEF

ARBITRATION EXEMPT  
(Appeal from Arbitration; Declaratory Relief  
Requested)

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

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GENERAL ALLEGATIONS

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

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

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

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

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

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

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

///

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

- 2               a)     Establishment of a "property owners committee" responsible for (a)  
3                       determining the type and cost of landscaping exterior wall planters,  
4                       entrance way planters, which cost is equally divided amongst the nine (9)  
5                       owners; (b) maintaining the exterior perimeter and frontage; (c)  
6                       maintaining the entrance gate; and (d) maintaining the private drive and  
7                       the sewer system.
- 8               b)     "...an owner or owners of any of the lots shall have the right to enforce  
9                       any or all of the provisions of the covenants, conditions and restrictions  
10                      upon any other owner or owners."

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

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

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

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

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

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

28     ///

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

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

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

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

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

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

28     ///

**FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

**WHEREFORE**, Plaintiff prays that this Court:

**FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

3  
4 DATED: April 1, 2015

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

5  
6 By: 

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

10  
11 **COMPLETION OF NRS CHAPTER 38 DISPUTE RESOLUTION PROGRAM**

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

16 Dated: April \_\_, 2015

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

18  
19 Dated: April \_\_, 2015

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

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

DATED: April 1, 2015

GIBBS, GIDEN, LOCHER, TURNER & SENET LLP

By:

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

**COMPLETION OF NRS CHAPTER 38 DISPUTE RESOLUTION PROGRAM**

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

Dated: April 1, 2015

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

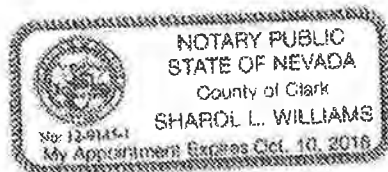
Dated: April 1, 2015

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

State of Nevada  
County of Clark

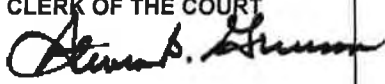
This instrument was acknowledged before  
me this 1 day of April, 2015  
by JOHN ALLEN LYTLE

*[Signature]*  
Notary Public



# EXHIBIT “P”

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Steven D. Grierson  
CLERK OF THE COURT



**ORD**  
Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP  
7450 Arroyo Crossing Parkway, Suite 270  
Las Vegas, Nevada 89113-4059  
(702) 836-9800

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

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

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

Plaintiff,

**ORDER GRANTING SUMMARY  
JUDGMENT**

v.

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

Defendants.

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

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

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

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1  
2 **I. FINDINGS OF FACT**

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

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

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

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

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

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

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

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

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

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

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

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

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## II. CONCLUSIONS OF LAW

### A. Summary Judgment Standard

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 15. To interpret an ambiguous statute, we look to the legislative history and construe the  
21 statute in a manner that is consistent with reason and public policy. Great Basin Water Network v.  
22 State Eng'r, 126 Nev. —, —, 234 P.3d 912, 918 (2010); see also Moore v. State, 122 Nev. 27,  
23 32, 126 P.3d 508, 511 (2006); Robert E., 99 Nev. at 445–48, 664 P.2d at 959–61.

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

9           17.     Chapter 116 is ambiguous with respect to the election of Board for a limited purpose  
10 association. While a Board is required, the election process normally required for a Board is not  
11 included in the limited purpose association statutory framework. See generally NRS 116.1201,  
12 116.31083, 116.31152.

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

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

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

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

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

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

### III. JUDGMENT

#### IT IS HEREBY ADJUDGED AND DECREED

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

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

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

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

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

IS SO ORDERED this 13 day of Sept, 2017.

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

1 DATED: September 8, 2017

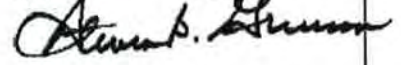
GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

2  
3 By: \_\_\_\_\_

4 Richard E. Haskin, Esq.  
5 Nevada State Bar # 11592  
6 7450 Arroyo Crossing Parkway, Suite 270  
7 Las Vegas, Nevada 89113-4059  
8 Attorneys for Plaintiff  
9 JOHN ALLEN LYTLE and TRUDI LEE LYTLE, as  
10 Trustees of the Lytle Trust  
11  
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GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

# EXHIBIT “Q”



1 **ORD**

2 Richard E. Haskin, Esq.  
3 Nevada State Bar # 11592  
4 **GIBBS GIDEN LOCHER TURNER**  
5 **SENET & WITTBRODT LLP**  
6 1140 N. Town Center Dr., Suite 300  
7 Las Vegas, Nevada 89144  
8 (702) 836-9800

9 Attorneys for Plaintiff  
10 JOHN ALLEN LYTLE AND TRUDI LEE  
11 LYTLE

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

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

16 Plaintiff,

17 v.

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

22 Defendants.

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

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

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

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

///

///

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

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

7           25.    Attorney's Fees: In any legal or equitable proceeding for the  
8 enforcement of or to restrain the violation of the Declaration of Covenants,  
Conditions and Restrictions or any provision thereof, the losing party or  
9 parties shall pay in such amount as may be fixed by the court in such  
proceeding.

10       *See* Original CC&Rs, ¶¶ 24, 25.

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

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

16           1. Subject to the requirements set forth in subsection 2, if a declarant,  
17 community manager or any other person subject to this chapter fails to  
18 comply with any of its provisions or any provision of the declaration  
or bylaws, any person or class of persons suffering actual damages  
from the failure to comply may bring a civil action for damages or  
other appropriate relief. . .

19           4. The court may award reasonable attorney's fees to the prevailing  
20 party.

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

27       ///

28       ///

1           6.       Plaintiffs' attorneys' fees, as set forth in the Motion and the affidavits in support  
2 thereof, satisfy the factors set forth in *Brunzell v. Golden gate Nat'l Bank* (1969) 85 Nev. 345, 349,  
3 455 P.2d 31, 33. The Court considered all of the factors and applied them to Plaintiffs' request for  
4 attorneys' fees.

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

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

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

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

16           Therefore,

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


18           IT IS FURTHER ORDERED that Plaintiffs are awarded \$14,807.50 in attorneys' fees and  
19 \$655.10 in costs as against Defendant.

20  
21           DATED this 7 day of November, 2017.

22  
23  
24             
HONORABLE ~~ROB BARE~~ Jerry A. Wiese II  
DISTRICT COURT JUDGE  
25           JAE

1 Submitted by:

2 GIBBS GIDEN LOCHER TURNER, SENET  
3 & WITTBRODT LLP

4   
5 \_\_\_\_\_  
6 Richard E. Haskin, Esq.  
7 Nevada State Bar # 11592  
8 1140 N. Town Center Drive, Suite 300  
9 Las Vegas, Nevada 89144  
10 Attorneys for Plaintiffs  
11 JOHN ALLEN LYTLE and  
12 TRUDI LEE LYTLE  
13  
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# EXHIBIT “R”

**RECORDING REQUESTED BY**

**GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP**

**AND WHEN RECORDED MAIL TO**

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

27

**Inst #: 20160818-0001198****Fee: \$19.00****N/C Fee: \$0.00****08/18/2018 11:51:34 AM****Receipt #: 2848916****Requestor:****NATIONWIDE LEGAL****Recorded By: ANI Pgs: 3****DEBBIE CONWAY****CLARK COUNTY RECORDER****THIS SPACE FOR RECORDER'S USE**

APN No.: 163-03-313-001  
APN No.: 163-03-313-002  
APN No.: 163-03-313-003  
APN No.: 163-03-313-004  
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APN No.: 163-03-313-008

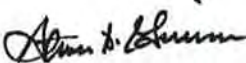
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**ABSTRACT OF JUDGMENT**

**THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION**  
(Govt. Code 27381.6)  
(Additional recording fee applies)

1769757.1

Electronically Filed  
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CLERK OF THE COURT

1 Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
2 Timothy P. Elson, Esq.  
Nevada State Bar # 11559  
3 **GIBBS GIDEN LOCHER TURNER**  
**SENET & WITTBRODT LLP**  
4 7450 Arroyo Crossing Parkway, Suite 270  
Las Vegas, Nevada 89113-4059  
5 (702) 836-9800

6 Attorneys for Plaintiff  
JOHN ALLEN LYTLE and  
7 TRUDI LEE LYTLE

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

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

CASE NO. A-09-593497-C  
Dept.: XII

12 Plaintiff,

**ABSTRACT OF JUDGMENT**

13 v.

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

16 Defendants.

17  
18 In the District Court of Clark County, State of Nevada, on July 29, 2013, a Judgment was  
19 entered in favor of Plaintiffs JOHN ALLEN LYTLE and TRUDI LEE LYTLE, as Trustees of the  
20 Lytle Trust ("Plaintiffs") and against Defendant ROSEMERE ESTATES PROPERTY OWNERS'  
21 ASSOCIATION ("Defendant").

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

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

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

28 ///

**RECEIVED**  
AUG 12 2016  
**DEPT. 12**

1763303.1

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

000546

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

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

DATED: 8/15/10

  
DISTRICT COURT JUDGE  
RL

Respectfully requested by:

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

By: 

Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
Timothy P. Elson, Esq.  
Nevada State Bar # 11559  
7450 Arroyo Crossing Parkway, Suite 270  
Las Vegas, Nevada 89113-4059  
Attorneys for Plaintiff  
JOHN ALLEN LYTLE and TRUDI LEE  
LYTLE

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

# EXHIBIT “S”

Inst #: 20170810-0001481

Fees: \$19.00

N/C Fee: \$0.00

08/10/2017 11:25:51 AM

Receipt #: 3163215

Requestor:

GIBBS GIDEN

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CLARK COUNTY RECORDER

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Abstract of Judgment

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Rich Haskin

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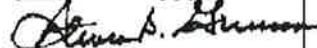
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Steven D. Grierson  
CLERK OF THE COURT



Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
**GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP**  
1140 N. Town Center Drive, Suite 300  
Las Vegas, Nevada 89144-0596  
Telephone: (702) 836-9800  
E-mail: rhaskin@gibbsgiden.com

Attorneys for Plaintiffs  
JOHN ALLEN LYTLE and  
TRUDI LEE LYTLE

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

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

**ABSTRACT OF JUDGMENT**

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

Counterclaimants,

v.

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

Counterdefendants.

///

///

///

///

JUL 12 2017

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

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

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

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

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

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

DATED: July 20, 2017

  
DISTRICT COURT JUDGE

ROB BARE  
JUDGE, DISTRICT COURT, DEPARTMENT 32

20 Respectfully requested by:

GIBBS GIDEN LOCHER TURNER  
22 SENET & WITTBRODT LLP

By: 

24 Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
25 Timothy P. Elson, Esq.  
Nevada State Bar # 11559  
26 7450 Arroyo Crossing Parkway, Suite 270  
Las Vegas, Nevada 89113-4059  
27 Attorneys for Plaintiffs  
JOHN ALLEN LYTLE and TRUDI LEE  
28 LYTLE

# EXHIBIT “T”

## IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN ALLEN LYTLE AND TRUDI LEE  
LYTLE, AS TRUSTEES OF THE LYTLE  
TRUST,

Appellants,

vs.

ROSEMERE ESTATES PROPERTY  
OWNERS ASSOCIATION, A NEVADA  
NON-PROFIT CORPORATION,

Respondent.

No. 60657

**FILED**

DEC 21 2015

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

JOHN ALLEN LYTLE AND TRUDI LEE  
LYTLE, AS TRUSTEES OF THE LYTLE  
TRUST,

Appellants,

vs.

ROSEMERE ESTATES PROPERTY  
OWNERS ASSOCIATION, A NEVADA  
NON-PROFIT CORPORATION,

Respondent.

No. 61308

*ORDER VACATING AND REMANDING*

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

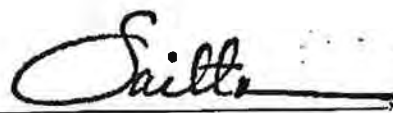
Having considered the record, we conclude that the Lytles' actions during the NRED arbitration were sufficient to "submit" their slander of title claim to the NRED arbitrator for purposes of NRS 38.330(5). We also conclude that the Lytles did not need to establish that

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

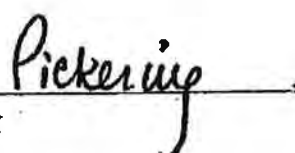
In light of our conclusion that summary judgment was improperly granted, we vacate the district court's June 5, 2012, order awarding attorney fees, costs, and damages to Rosemere, as Rosemere at this point is not the prevailing party. For the same reasons, we vacate the district court's August 13, 2012,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

Consistent with the foregoing, we

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>2</sup>

  
Saitta J.

  
Gibbons J.

  
Pickering J.

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

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

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

000555

000555

# EXHIBIT “U”

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROSEMERE ESTATES PROPERTY  
OWNERS ASSOCIATION,  
Appellant,

vs.

JOHN ALLEN LYTLE AND TRUDI LEE  
LYTLE, AS TRUSTEES OF THE LYTLE  
TRUST,

Respondents.

JOHN ALLEN LYTLE AND TRUDI LEE  
LYTLE, AS TRUSTEES OF THE LYTLE  
TRUST,

Appellants,

vs.

ROSEMERE ESTATES PROPERTY  
OWNERS ASSOCIATION,

Respondent.

JOHN ALLEN LYTLE AND TRUDI LEE  
LYTLE, AS TRUSTEES OF THE LYTLE  
TRUST,

Appellants,

vs.

ROSEMERE ESTATES PROPERTY  
OWNERS ASSOCIATION,

Respondent.

No. 63942

**FILED**

OCT 19 2015

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

No. 65294

No. 65721

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

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

*Docket No. 63942*

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

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

---

<sup>1</sup>Nor has Rosemere explained how its 2007 amendments complied with Section 37's October 2000 deadline for making such amendments.

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

*Docket No. 65294*

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

*Monetary damages*

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

---

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

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

### Costs

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

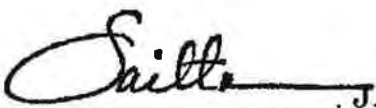
### Docket No. 65721

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

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

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

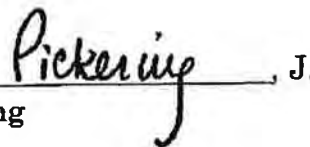
It is so ORDERED.

 J.

Saitta

 J.

Gibbons

 J.

Pickering

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

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

**Docket Number - 65970**



**Document Year - 2015**



**Document Number - 31751**



# EXHIBIT “V”

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Steven D. Grierson  
CLERK OF THE COURT


**1 ORDER**

Richard E. Haskin, Esq.

2 Nevada State Bar # 11592

Timothy P. Elson, Esq.

3 Nevada State Bar # 11559

**GIBBS GIDEN LOCHER TURNER**4 **SENET & WITTBRODT LLP**

1140 N. Town Center Drive, Suite 300

5 Las Vegas, Nevada 89144-0596

(702) 836-9800

6 Attorneys for Defendants

7 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,

8 &amp; THE LYTLE TRUST

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

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

17 Plaintiff,

18 v.

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

20 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*

21 Plaintiffs' Motion for Partial Summary Judgment and Defendants' Counter Motion for

22 Summary Judgment having come on for hearing before this Court on of April 13, 2017. Plaintiffs

23 Marjorie Boulden and Linda Lamothe appeared with their counsel, Daniel T. Foley, Esq. and

24 Defendants John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust, appeared with their

25 counsel, Richard Haskin, Esq. After hearing, the Court entered Findings of Fact, Conclusions of

26 Law and entered an Order Granting Plaintiffs' Motion for Partial Summary Judgment on April 25,

27 2017.

28 ///

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.

///

1           13.     On September 2, 2016, the Defendants recorded with the Clark County Recorder's  
2 office an Abstract of Judgement referencing the Final Judgment against the Association, recorded as  
3 Instrument #20160902-0002684 (the "Second Abstract of Judgment"). The Second Abstract of  
4 Judgment listed the parcel number of the Lamothe Property only as the property to which the  
5 Judgment was to attach.

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

#### 11                                   CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

27     ///

28     ///

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.

12  
 13 DATED this 19<sup>th</sup> day of July 2017

14  
 15   
 16 DISTRICT COURT JUDGE  
 17 

18 Submitted by:  
 19 FOLEY & OAKES, PC

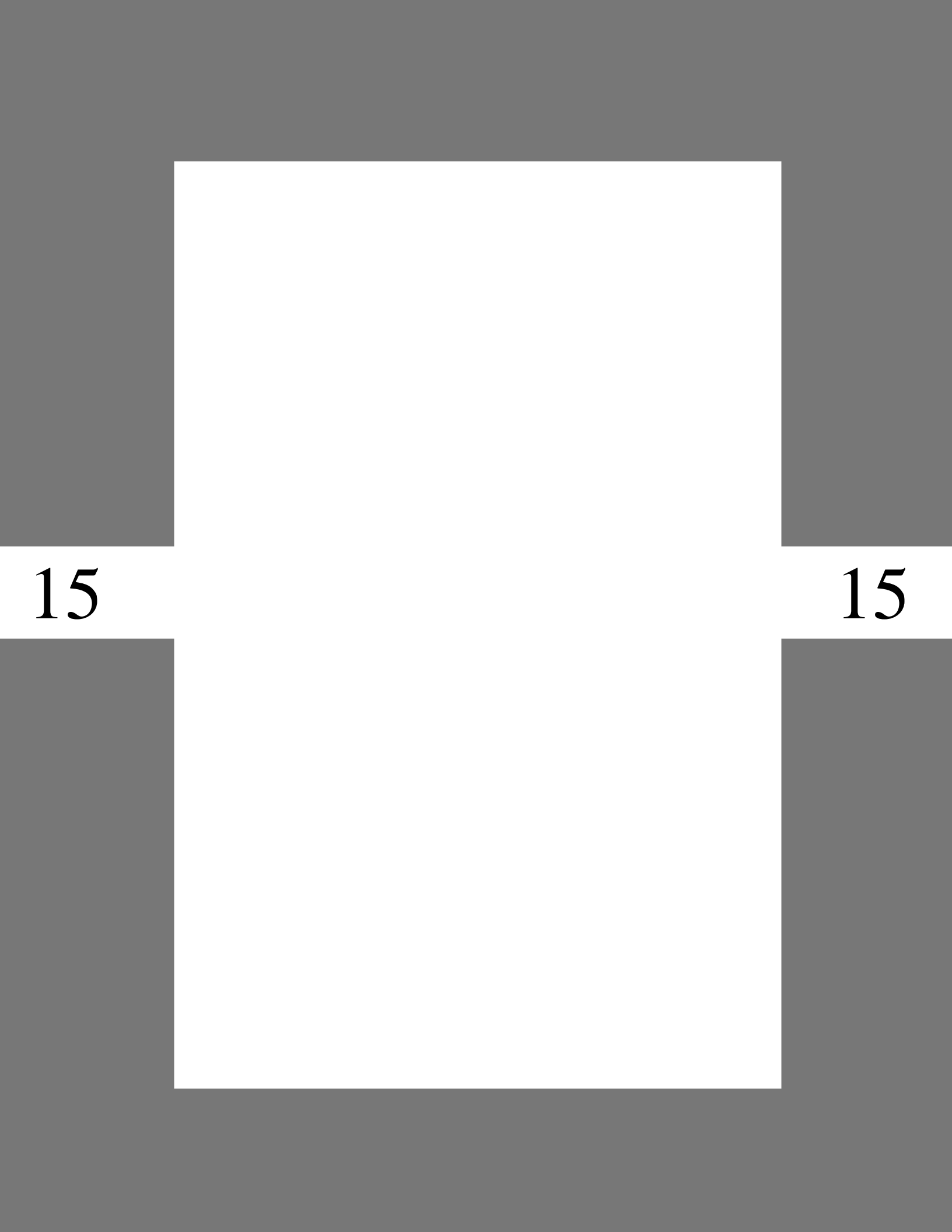
20 Daniel T. Foley, Esq.  
 21 626 S. 8<sup>th</sup> St.  
 22 Las Vegas, Nevada 89101  
 23 Attorney for Plaintiffs

24 Approved as to form:

25 Richard E. Haskin, Esq.  
 26 Gibbs Giden Locker Turner Senet & Wittbrodt LLP  
 27 1140 N. Town Center Dr., Ste. 300  
 28 Las Vegas, Nevada 89144  
 29 Attorney for Defendants

GIBBS GIDEN LOCKER TURNER SENET & WITTBRODT LLP

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15

15

**OPPC**  
**CHRISTENSEN JAMES & MARTIN**  
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: wes@cjmlv.com; ljw@cjmlv.com  
*Attorneys for Plaintiffs*

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

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

Plaintiffs,

vs.

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

Defendants.

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

**PLAINTIFFS' REPLY TO  
DEFENDANTS' OPPOSITION TO  
THE MOTION FOR SUMMARY  
JUDGMENT, OR, IN THE  
ALTERNATIVE, MOTION FOR  
JUDGMENT ON THE PLEADINGS  
AND OPPOSITION TO PLAINTIFFS'  
COUNTERMOTION FOR  
SUMMARY JUDGMENT**

Date: March 8, 2018  
Time: 9:00 a.m.

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

1 Trust Dated May 27, 1992 (“Sandoval Trust”), and Dennis A. Gegen and Julie S. Gegen,  
2 Husband and Wife, as Joint Tenants (“Gegen”) (hereafter September Trust, Zobrist Trust,  
3 Sandoval Trust and Gegen may be collectively referred to as “Plaintiffs”), by and through  
4 their attorneys, Christensen James & Martin, hereby Reply to and Oppose the Defendants  
5 Trudi Lee Lytle, and John Allen Lytle, the Lytle Trust (1) Opposition to Motion for  
6 Summary Judgment, or, in the Alternative, Motion for Judgment on the Pleadings; and (2)  
7 Countermotion for Summary Judgment (hereafter the “Countermotion”). This Reply and  
8 Opposition are made and based on the following Memorandum of Points and Authorities,  
9 the pleadings, papers, and exhibits on file herein or attached hereto, and any oral argument  
10 entertained by the Court.  
11

12 DATED this 21st day of February, 2018.

13 CHRISTENSEN JAMES & MARTIN

14 By: /s/ Laura J. Wolff, Esq.

15 Laura J. Wolff, Esq.

16 Nevada Bar No. 6869

17 7440 W. Sahara Avenue

18 Las Vegas, NV 89117

19 Tel.: (702) 255-1718

20 Fax: (702) 255-0871

21 *Attorneys for Plaintiffs*

## 22 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 23 **I.**

#### 24 **INTRODUCTION**

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

1 Association is not subject to NRS 116.3117, the property owners were not parties to the  
2 Rosemere Litigation, the Rosemere Judgment I is not an obligation or debt of the property  
3 owners and that the Abstracts of Judgment were improperly recorded against such properties  
4 and must be expunged and stricken from the record. The Plaintiffs believe that when this  
5 Court reviews Judge Williams' Order it will determine such is a judicially sound decision  
6 based on all the facts and law of this case, as explained in detail below. The Plaintiffs  
7 request that this Court grant substantially similar relief in this case to avoid inconsistent  
8 rulings involving the same facts, the same or similarly situated parties, and the same law.  
9

## 10 II.

### 11 **RESPONSE TO BRIEF STATEMENT OF MATERIAL AND UNDISPUTED FACTS**

12 Defendants state as a fact that the Association includes every lot in the subdivision  
13 based on the language in the first paragraph of the Original CC&Rs. *See* Countermotion at  
14 4:1-8. This has no basis in law or fact and is simply not true. *See* discussion *infra* Section  
15 III.D.5.  
16

17 The allegations with regard to the Amended CC&Rs are simply not relevant to this  
18 litigation because the Lytles have argued since 2007 in every contested stage of every case  
19 they have filed related to this issue that the Amended CC&Rs should be declared void *ab*  
20 *initio* - which they were in the NRED 1 and 2 litigations. *See* Countermotion at 4:14-28, 5,  
21 6:1-3; *see also infra* Section III.C. Simply put, the Lytles are attempting to paint a picture of  
22 the horrible acts of the Association, which may or may not be true, but such actions are not  
23 relevant to this case. This case is about the Lytles taking Judgments obtained against the  
24 Association and unlawfully recording them against the Plaintiffs' properties.  
25  
26  
27  
28

1 Defendants spend three (3) pages explaining the past litigation between the Lytles  
2 and the Association. Countermotion at 6:4-28, 8, 9. The NRED 1, 2 and 3 cases were against  
3 the Association and not the Plaintiffs. Therefore, any judgments obtained and motions won  
4 by the Lytles were against the Association and not the individual homeowners. Additionally,  
5 what the Lytles conveniently leave out is that all the money Judgments obtained against the  
6 Association in the NRED 1, 2 and 3 cases were granted after the Association's counsel  
7 withdrew. On January 6, 2016, the attorneys for the Association filed their Motion to  
8 Withdraw as Attorney of Record on an Order Shortening Time in all three (3) cases.  
9 Thereafter, all orders and judgments obtained by the Lytles, including the Judgments  
10 recorded against the Plaintiffs' properties, were uncontested, as explained below.  
11

12  
13 In the NRED 1 litigation, the Court entered its Order on the Motion to Withdraw on  
14 February 2, 2016. Thereafter, the Association was not represented by counsel and all  
15 pleadings were unopposed, as follows: 1. On March 24, 2016, the Lytles filed their Motion  
16 for Attorney's Fees; 2. On April 26, 2016, the Lytles filed a Notice of Non-Opposition to  
17 their Motion for Attorney's Fees; 3. On May 2, 2016, Judge Leavitt granted the unopposed  
18 Motion for Attorney's Fees; 4. On June 3, 2016, the Court entered its Order granting the  
19 Attorney's Fees; and 5. Thereafter, the Lytles filed and the Court heard their unopposed  
20 Motion to Prove Up Damages and Costs and the Abstract of Judgment was recorded.  
21

22  
23 On February 12, 2016 in the NRED 2 Litigation, Judge Rob Bare granted the Motion  
24 and the Order on the Motion to Withdraw was filed. Thereafter, the Association was not  
25 represented by counsel and all pleadings filed thereafter were unopposed, as follows: 1. On  
26 or about March 8, 2016, the Lytles filed a Motion for Leave to File a First Amended  
27 Complaint, which was granted on June 3, 2016; 2. On or about September 14, 2016, the  
28

1 Lytles filed their Motion for Summary Judgment which was granted on or about November  
2 14, 2016, which included punitive damages; 3. On or about January 16, 2017, the Lytles  
3 filed their Motion for Attorney's Fees which was granted on April 18, 2017; 4. On or about  
4 February 23, 2017, the Lytles filed their Motion to Prove-Up Damages which was granted  
5 on or about May 15, 2017; and 5. On or about July 20, 2017, the District Court signed an  
6 Abstract of Judgment in the amount of \$1,103,158.12.  
7

8 At a hearing on January 14, 2016 in the NRED 3 Litigation, Judge Jerry A. Wiese  
9 granted the Motion to Withdraw. On January 26, 2016, the Order on the Motion to  
10 Withdraw was filed. Thereafter, the Association was not represented by counsel and all  
11 pleadings filed thereafter were unopposed, as follows: 1. On or about May 10, 2016, the  
12 Lytles filed their Motion for Summary Judgment; 2. On or about September 13, 2017, the  
13 Court entered its Order granting Summary Judgment; and 3. On or about November 7, 2017,  
14 the Lytles' Motion for Attorney's Fees and Costs was granted.  
15

### 16 III.

#### 17 ARGUMENT

18  
19 The Lytles are taking a Judgment they have obtained against the Association and are  
20 trying to enforce it against the individual homeowners. They are doing this in direct  
21 contravention of the results of the NRED 1, 2 and 3 cases. In the NRED 1 and 2 cases, the  
22 Court found that the Amended CC&R's were void *ab initio*. Thus, the Lytles are not entitled  
23 to any remedies found in NRS 116.3117. This very same issue has already been decided by  
24 Judge Timothy Williams in the BL Lawsuit, which should be followed by this Court.  
25

26 A. Judicial Economy and Judicial Consistency Will be Served if this Court Adopts a  
27 Similar Ruling to Judge Williams.  
28

1           On July 25, 2017, Judge Timothy C. Williams issued the Order in Case No. A-16-  
2 747900-C granting the Bouldens' and Lamothes' Motion for Partial Summary Judgment.  
3 See Exhibit 10 attached to the Plaintiffs' SJ Motion. In the Order, Judge Williams found  
4 that, among other things, the Association is not subject to NRS 116.3117, the Judgment is  
5 not an obligation or debt of the Bouldens or the Lamothes and that the Abstracts of  
6 Judgment were improperly recorded against such properties and must be expunged and  
7 stricken from the record. See Ex. 10 at 4-5. After the Court issued its Order, the Lytles  
8 released their liens against the Boulden and Lamothe properties. See Exhibit 11 attached to  
9 the SJ Motion. The Lytles have appealed Judge Williams' Order. A true and correct copy of  
10 the Appellants' Opening Brief is attached hereto as Exhibit "16".  
11

12  
13           Naturally, the Plaintiffs in this case would like the same relief that Judge Williams  
14 granted to the Bouldens and Lamothes. This relief is necessary and appropriate now to clear  
15 the Plaintiffs' title to their property. The Plaintiffs urge this Court to review Judge Williams'  
16 Order and all the prior court pleadings that resulted in his decision. It is legally sound and  
17 appropriate to be applied here in this Case.  
18

19           Further, on February 21, 2018, Judge Mark Bailus granted the Plaintiffs' Motion to  
20 Consolidate this Case with Case No. A-16-747900-C, where the Order was entered. Since  
21 the cases have been consolidated, the doctrine of the "law of the case" should apply. "The  
22 law-of-the-case doctrine 'refers to a family of rules embodying the general concept that a  
23 court involved in later phases of a lawsuit should not re-open questions decided (i.e.,  
24 established as law of the case) by that court or a higher one in earlier phases.'" *Recontrust*  
25 *Co. v. Zhang*, 130 Nev. Adv. Op. 1, 317 P.3d 814, 818 (2014) (quoting *Crocker v. Piedmont*  
26  
27  
28

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

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

7 *Hsu v. Cty. of Clark*, 123 Nev. 625, 630, 173 P.3d 724, 728 (2007) (quoting *U.S. v. Real*  
8 *Prop. Located at Incline Vill.*, 976 F.Supp. 1327, 1353 (D. Nev. 1997)). The rule is  
9 “designed to protect both the court and the litigants before it from repeated reargument of  
10 issues already decided.” *U.S. v. Real Prop. Located at Incline Vill.*, 976 F. Supp. 1327, 1353  
11 (D. Nev. 1997).  
12

13         Here, several key issues were addressed by Judge Williams which should be the law  
14 of the case, including that the Association is not subject to NRS 116.3117, the property  
15 owners were not parties to the Rosemere Litigation, the Rosemere Judgment I is not an  
16 obligation or debt of individual property owners, and that the Abstracts of Judgment were  
17 improperly recorded against such properties and must be expunged and stricken from the  
18 record. The only issue not decided by Judge Williams is whether this relief is appropriate as  
19 to these particular Plaintiffs/Property Owners. Adopting Judge Williams’ Order for these  
20 Plaintiffs will promote judicial economy, consistency, finality, and protection of the court’s  
21 integrity.  
22

23         Plaintiffs are aware that since Judge Williams has recused himself Judge Bailus will  
24 be deciding this SJ Motion. However, this Court should decide these issues in the same way  
25 to avoid inconsistent verdicts and to serve judicial economy. The Court should not reopen  
26 every decision entered in this case merely because the case has been reassigned, and  
27  
28

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

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

7  
8 Additionally, Plaintiffs assert that issue preclusion applies in this case. "Issue  
9 preclusion, or collateral estoppel, is a proper basis for granting summary judgment."  
10 *LaForge v. State, University and Community College System of Nevada*, 116 Nev. 415, 419,  
11 997 P.2d 130 (2000). Courts have found that a "district court's partial summary judgment  
12 arguably finally adjudicates one of respondent's claims for relief." *Hallicrafters Co. v.*  
13 *Moore*, 102 Nev. 526, 528, 728 P.2d 441, 442 (1986).

14  
15 In *Executive Mgmt. v. Ticor Title Ins. Co.*, 114 Nev. 823, 835-36, 963 P.2d 465,  
16 473-74 (1998), the Nevada Supreme Court clarified the three-part test for issue preclusion  
17 as follows: "(1) the issue decided in the prior litigation must be identical to the issue  
18 presented in the current action; (2) the initial ruling must have been on the merits and have  
19 become final; and (3) the party against whom the judgment is asserted must have been a  
20 party in privity with a party to the prior litigation." "Unlike claim preclusion, issue  
21 preclusion 'does not apply to matters which could have been litigated but were not.' " *Id* at  
22 473 quoting *Pomeroy v. Waitkus*, 183 Colo. 344, 517 P.2d 396, 399 (1974) (footnote  
23 omitted). Issue preclusion may apply "even though the causes of action are substantially  
24 different, if the same fact issue is presented." *Clark v. Clark*, 80 Nev. 52, 56, 389 P.2d 69,  
25 71 (1964).  
26  
27  
28

1 In the instant case, the facts and circumstances are exactly the same and the  
2 Defendants are the same. The exact same fact pattern exists in this case as in the case it has  
3 been consolidated with, Case No. A-16-747900-C. The only difference in this case is that  
4 there are four (4) different homeowners asserting the exact same request for relief. Thus,  
5 issue preclusion should be applied and Judge Williams' Order should be followed by this  
6 Court.  
7

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

10 In each of the cases filed by the Lytles (NRED 1, 2 and 3), the monetary Judgments  
11 that the Lytles obtained against the Association were prepared and filed by the Lytles'  
12 attorneys and were unopposed by the Association. Any hearings held to obtain the  
13 Judgments were not contested or attended by any representative of the Association. *See*  
14 *supra* Section II; Exhibit "17", a true and correct copy of the Case Summaries in the NRED  
15 1, 2 and 3 cases. Thus, the Lytles obtained what can only be considered "default judgments"  
16 against the Association. In the instant case, the Lytles are now trying to enforce these  
17 "default judgments" against parties that were never named in the lawsuits **they** filed.  
18

19 The Nevada courts have been clear that justice is best served when cases are decided  
20 upon their merits and not through default judgments. *Hotel Last Frontier Corp. v. Frontier*  
21 *Props., Inc.*, 79 Nev. 150, 155, 380 P.2d 293 (1963). A strong policy exists in favor of  
22 resolution of disputes on their merits. *Yochum v. Davis*, 98 Nev. 484, 487, 653 P.2d 1215  
23 (1982). "Default judgments are only available as a matter of public policy when an  
24 essentially unresponsive party halts the adversarial process." *Lindblom v. Prime Hospitality*  
25 *Corp.*, 120 Nev. 372, 376, 90 P.3d 1283 (2004). Default judgments are usually set aside  
26 "because the court favors resolving disputes on their merits." *Jiminez v. State, Dept of*  
27  
28

1 *Prisons*, 98 Nev. 204, 644 P.2d 1023 (1982). “The district court has wide discretion in  
2 determining whether to set aside a default judgment.” *Reynolds v. Spinelli*, 281 P.3d 1213,  
3 2009 WL 3189344 \* 1 (2009). Further, the defaulting actions of one defendant cannot be  
4 imputed to another who behaves properly. *Gearhart v. Pierce Enters., Inc.*, 105 Nev. 517,  
5 520, 779 P.2d 93, 95 (1989) (citing *Doyle v. Jorgensen*, 82 Nev. 196, 203 n. 11, 414 P.2d  
6 707, 711 n. 11 (1966)).

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

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

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

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

15  
16  
17  
18 Second, and more importantly, the language of the NRED 2 Summary Judgment  
19 Order **prepared by Lytles’ attorney** and unopposed by the Association (which they  
20 acknowledge in the Order) entered on November 15, 2016, **specifically refutes** what the  
21 Lytles have asserted about the NRED 2 Litigation in their Countermotion. The “Conclusions  
22 of Law” Section specifically states:

23  
24 6. The Lytles’ Seventh Cause of Action seeks Declaratory Relief and  
25 assumes, therein, **that the Amended CC&Rs are void ab initio, as they**  
26 **indeed are.**<sup>1</sup> [FN 1. Plaintiffs believe that a determination as to the Seventh  
27 Cause of Action first, which alleges that the liens are void ab initio and must  
28 be revoked **because the District Court already has determined that the**  
**Amended CC&Rs are void ab initio is the appropriate starting point for**  
**the Court’s determination of this matter.] See First Amended Complaint**  
**(“FAC”), ¶¶ 32 -39. Specifically, the Lytles seek this Court to declare that the**

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

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

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

...

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

...

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

...

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

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

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

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

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

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

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

19 *Void ab initio* contracts are completely unenforceable. In *Golden Pisces, Inc. v. Fred*  
20 *Wahl Marine Constr., Inc.*, 495 F.3d 1078 (9th Cir. 2007), a shipowner who prevailed in a  
21 breach of contract action by showing that the underlying contract was void sought to enforce  
22 an attorney's fee provision from the void contract. After analyzing many state and federal  
23 cases including *Mackintosh v. California Fed. Sav. & Loan Ass'n*, 113 Nev. 393, 405–06,  
24 935 P.2d 1154, 1162 (1997), a case on which the Lytles heavily rely, the Ninth Circuit  
25 determined that “[t]he principle that emerges from our survey of federal and state case law is  
26 that, consistent with the American Rule, a party who prevails by demonstrating that a  
27  
28

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

12  
13  
14 Further, *Katz v. Ban Der Noord*, 546 So.2d 1047 (Fla. 1989), upon which  
15 *Mackintosh* relies, makes clear that the holding is about a contract that is **rescinded**, not a  
16 contract that is void *ab initio*, as follows:

17  
18 The legal fictions which accompany a judgment of rescission do not change  
19 the fact that a contract did exist. It would be unjust to preclude the prevailing  
20 party to the dispute over the contract which led to its rescission from  
21 recovering the very attorney's fees which were contemplated by that contract.  
22 This analysis does no violence to our recent opinion in *Gibson v. Courtois* in  
23 which we held that the prevailing party is not entitled to collect attorney's fees  
24 under a provision in the document which would have formed the contract  
25 **where the court finds that the contract never existed.**

26  
27 *Id.* at 1049 (emphasis added). Thus, although the Lytles cited to *Mackintosh* in their  
28 Attorneys' Fees Order, and rely on it here (Counter-motion at 16), the case clearly does not  
apply since the Lytles had the Amended CC&R's declared void *ab initio*, and not just  
rescinded, in both the NRED 1 and 2 litigations. Further, the Plaintiffs remind the Court that  
the Lytles prepared the Order upon which they are relying and the Association had

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

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

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

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

3 Further, the sword and shield doctrine is not applicable against the Plaintiffs in this  
4 case because it is mostly applied in the context of the use of privileges. For example,  
5 Defendants cite to *Molina v. State*, 120 Nev. 185, 194, 87 P.3d 533 (2004), which states,  
6 “We will not permit a defendant to use insufficient communication with his attorney as a  
7 sword to assert a claim of ineffective assistance of counsel, but then use a claim of attorney-  
8 client privilege as a shield to protect the content of his conversations with his attorney.” *See*  
9 *also Fong v. MGM Mirage Intern. Marketing, Inc.*, 128 Nev. 896, 381 P.3d 612 (Table)  
10 (2012) (Plaintiff asserts sword and shield doctrine with regard to a gaming privilege);  
11 *Wardleigh v. Second Judicial Dist. Court in and for County of Washoe*, 111 Nev. 345, 354,  
12 891 P.2d 1180 (1995) (“The doctrine of waiver by implication reflects the position that the  
13 attorney-client privilege was intended as a shield, not a sword.”)(citations and quotation  
14 omitted); *Wynn Resorts, Limited v. Eighth Judicial District Court in and for County of*  
15 *Clark*, 399 P.3d 334, 346 (2017) (Invoking the sword and shield doctrine with regard to  
16 producing an investigative report but claiming a privilege for the underlying documents);  
17 *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 319 P.3d 618, 625, 130 Nev. Adv. Op. 13 (2014)  
18 (We have previously observed that “the attorney-client privilege was intended as a shield,  
19 not a sword.” (citations omitted)); *Sahara Gaming Corp. v. Culinary Workers Union Local*  
20 *226*, 115 Nev. 212, 224, 984 P.2d 164 (1999)(attempting to use the fair report privilege as a  
21 shield and a sword); *Dredge Corp. v. Wells Cargo, Inc.*, 80 Nev. 993, 102, 89 P.2d 394  
22 (1964); (The statute of limitations is available only as a shield, not as a sword); *Righetti v.*  
23 *Eighth Judicial District Court of State in and for County of Clark*, 388 P.3d 643, 649, 133  
24  
25  
26  
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28

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

4  
5 3. *Judicial Estoppel Bars the Lytles' Arguments Regarding the Amended  
6 CC&Rs and Limited Purpose Associations.*

7 As discussed above, the Lytles would like to have their cake and eat it too, arguing  
8 that it was proper to record the Abstracts of Judgment against the Plaintiffs' properties under  
9 the Amended CC&Rs and that all of NRS 116 should be applicable. Judicial estoppel bars  
10 any such argument. Under the doctrine of judicial estoppel, "[i]f a party has taken a position  
11 before a court of law, whether in a pleading, in a deposition, or in testimony, judicial  
12 estoppel may be invoked to bar that party, in a later proceeding, from contradicting his  
13 earlier position." Rand G. Boyers, *Comment, Precluding Inconsistent Statements: The*  
14 *Doctrine of Judicial Estoppel*, 80 NW. U.L.Rev. 1244, 1244–45 (1986). "The independent  
15 doctrine of judicial estoppel precludes a litigant from playing fast and loose with a court of  
16 justice by changing his position according to the vicissitudes of self-interest...." *Porter*  
17 *Novelli, Inc. v. Bender*, 817 A.2d 185, 188 (D.C. 2003). In Nevada, judicial estoppel applies  
18 when "(1) the same party has taken two positions; (2) the positions were taken in judicial or  
19 quasi-judicial administrative proceedings; (3) the party was successful in asserting the first  
20 position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions  
21 are totally inconsistent; and (5) the first position was not taken as a result of ignorance,  
22 fraud, or mistake." *Marcuse v. Del Webb Communities, Inc.*, 123 Nev. 278, 288, 163 P.3d  
23 462 (2007). The Lytles attempt to use the Amended CC&Rs against the Plaintiffs in this  
24 case is subject to the doctrine of judicial estoppel because this position is inconsistent with  
25  
26  
27  
28

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

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

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

8 Statutory language must be given its plain meaning if it is clear and unambiguous.  
9  
10 *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 476, 168 P.3d 731, 737  
11 (2007). The provisions of NRS 116 that apply to a limited purpose association are limited to  
12 those that are expressly enumerated in NRS 116.1201. On its face, NRS 116.3117 is not  
13 included, which should be enough to end the discussion.

14  
15 However, it seems the Lytles understand that dilemma so instead they rely on a  
16 string of statutory references to come to the conclusion that NRS 116.3117 applies to limited  
17 purpose associations. However, this string is illogical, not supported by case law, and the  
18 statutes in the chain are aimed at specific tort and contract liabilities with regard to  
19 condominium type units, not the kind of claim at issue here.

20  
21 The statutory string the Lytles follow in order to reach NRS 116.3117 is 116.1201 →  
22 116.4117 → 116.3111 → 116.3117. NRS 116.1201 was amended in 2005 (Senate Bill 325)  
23 to add that a limited purpose association is subject to 116.4101 to 116.412 (including  
24 116.4117). NRS 116.4117 was added to Chapter 116 in 1997 by Senate Bill 314. It  
25 contained a reference to NRS 116.3111 at the time of the 2005 amendment to NRS  
26 116.1201. However, NRS 116.3111 did not contain a reference to NRS 116.3117 at the time  
27  
28

1 of the 2005 amendment. In fact, the last sentence buried at the end of NRS 116.3111, which  
2 completes the string and is essential to the Lytles argument (stating that “liens resulting from  
3 judgments against the association are governed by NRS 116.3117”), was not added until  
4 2011 (Senate Bill 204). This suggests that the Legislature did not intend to create the string  
5 or make the connection that the Lytles are now suggesting can be used to record an  
6 association judgment against an individual unit owner.  
7

8 This is further emphasized when the substance of the statutes in the string is  
9 analyzed. NRS. 116.4117 states that claims for failure to comply with NRS 116 or  
10 governing documents can be brought against the association (NRS 116.4117(2)(b)(1)) or  
11 another unit’s owner (NRS 116.4117 (2)(b)(3)). But, NRS 116.3111 states that an action  
12 alleging a wrong done by the association may be maintained only against the association and  
13 not against any unit’s owner. These two (2) statutes are directly contradictory, which  
14 suggests that they must apply to different situations, and that they cannot be used together to  
15 create a right to record the Lytles’ judgment against the unit owners.  
16  
17

18 Further, NRS 116.3111 is titled “tort and contract liability”, which must be different  
19 than liability under NRS 116.4117 for failure to follow 116 or the governing documents.  
20 NRS 116.3111 is the statute that states that judgments are governed by NRS 116.3117. So, it  
21 appears that NRS 116.3117 only applies for the specific kind of association liability  
22 addressed in NRS 116.3111, and not the liability addressed in NRS 116.4117. To reiterate,  
23 NRS 116.4117 allows for claims against unit owners, while NRS 116.3111 does not. It  
24 makes sense then that NRS 116.3111 would provide a mechanism for recording an  
25 association liability judgment against the unit owner, because the creditor had no other  
26 remedy against the unit owner. On the other hand, NRS 116.4117 provides a remedy and  
27  
28

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

4  
5 In the session on May 13, 2011, the Assembly Subcommittee discussed whether  
6 NRS 116.3111 needed to include language to make clear that that the words "unit owner"  
7 refers to condominium unit owners as opposed to home owners. The committee decided that  
8 it was clear enough that the statute was talking about condominiums only.

9  
10 Assemblyman McArthur: I understand that. Do we need language in here that  
11 refers just to condominium-type units? Is this fine the way it is? This way, it is  
12 sort of all-inclusive. You do not go after individual unit owners for a common  
13 element liability, but you would in the case of condominium units or  
14 townhomes, where the unit owner has an interest in the whole thing. I just did  
15 not know whether we needed to divide those people out or not.

16 Karen Dennison: This is a Uniform Act change. I think the intent is basically  
17 that unit owners do not have control over what happens with the common  
18 elements. Normally, the maintenance, management, and operation of the  
19 common elements have been delegated to the association. The unit owners  
20 should not be liable for something for which they had no responsibility in  
21 creating.

22 Assemblyman McArthur: I understand that. **There is a difference between  
23 an HOA unit and a condominium unit. Maybe we do not need to separate  
24 the two in this case because it is obvious that you would not do that in an  
25 HOA, but you would need it for other unit types. This wording may be  
26 okay, I guess.**

27 Acting Chairman Carrillo: Assemblyman McArthur, you are good with this  
28 language?

Assemblyman McArthur: I guess we do not really need to separate them out.  
It is obvious that you would not do that in an HOA. This would actually  
pertain to condominium-types, so I think we are okay with this.

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

25  
26 While there are no cases under these sections of NRS, in states that have similar  
27 statutes with regard to "tort and contract liability," the types of cases that have been brought  
28 pursuant to these statutes have to do with traditional tort or contract liability of the

1 Association, and not failure to follow the common-interest community act. For instance,  
2 Hawaii has a similar statute, HRS § 514B-141, with regard to “tort and contract liability.” A  
3 case brought under this statute was filed against the Association for the drowning of a child  
4 in a swimming pool at the condominium. *Estate of Rogers v. AOA Maluna Kai Estates*,  
5 2008 WL 11344919 (D. Hawaii 2008). Similarly, under a similar statute in Washington,  
6 RCW 64.34.344, the association sued the developer under this statute for failure to repair the  
7 common elements. *Water’s Edge Homeowners Ass’n v. Water’s Edge Associates*, 152  
8 Wash.App. 572, 216 P.3d 1110 (Wash Ct. App. 2009). These are the kinds of cases  
9 contemplated by this type of statute. Thus, the plain language of the statute did not and does  
10 not contemplate the filing of liens obtained by individuals against the Association for  
11 declaratory judgments regarding the CC&Rs. The Court should reject the Lytles’ strained  
12 and remote reading of NRS 116.

13  
14  
15 5. *General Common Interest Community Principles Are Inapplicable to the*  
16 *Association.*

17 The Lytles quote NRS 17.150(2) as authority to allow recording of the abstracts of  
18 Judgment against the Plaintiffs’ properties. However, the part of the rule that the Lytles have  
19 bolded states that the abstract of judgment becomes a “lien upon all the real property of the  
20 judgment debtor.” The Judgment Debtor is the **Association**, not the Plaintiffs. The Lytles  
21 never sued the Plaintiffs individually and the Plaintiffs are not judgment debtors. Therefore,  
22 there is no basis for the Lytles to record a lien against the Plaintiffs under NRS 17.150(2).  
23

24 Further, in the NRED 3 Complaint filed in 2015, the Lytles only quote from the  
25 Original CC&Rs to obtain relief and never mention the Amended CC&Rs. Paragraph five of  
26 the Complaint states, “That since the Association is comprised of only nine (9) units, the  
27 Association is classified as a small planned community pursuant to NRS 116.1203, and is  
28

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

4  
5 The NRED 3 Complaint was only filed to obtain declaratory relief against the  
6 Association that Chapter 116 requires the Association to have a Board of Directors at all  
7 times, that the Association currently does not have a Board of Directors, and that an election  
8 must be made immediately. *Id.* at 6. In the Order Granting Summary Judgment in the NRED  
9 3 litigation, one of the Findings of Fact is, “Rosemere Estates is governed by the  
10 community’s CC&Rs, which were drafted by the Developer, and dated January 4, 1994 (the  
11 ‘CC&Rs’).” One of the Conclusions of Law is that, “The Association is a limited purpose  
12 association per NRS 116. While a limited purpose association is not restricted by all of the  
13 provisions of Chapter 116, a limited purpose association must have a Board of Directors.  
14 NRS 116.1201, 116.31083, 116.31152.” See Exhibit P attached to the Countermotion, at 2:  
15 10-11, 4:2-4. There is no mention of the Amended CC&R’s or a request for any finding but  
16 that the Association is a limited purpose association.  
17

18  
19 Therefore, this attempt by the Lytles to now characterize the Association as anything  
20 but a limited purpose association is specifically contrary to what they requested in the  
21 NRED 1, 2 and 3 litigations. And, in the NRED 3 litigation, they filed all pleadings as if the  
22 Amended CC&R’s were void *ab initio*.  
23

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

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

1 Defendants assert that the introductory language in the CC&Rs that states that breaches of  
2 the CC&Rs shall not defeat mortgages or deeds of trusts recorded against any of the  
3 properties also gives them the right to file the Abstracts of Judgment against the Plaintiffs'  
4 Properties. However, this language is simply and only to allow buyers of property to obtain  
5 loans to finance the purchases of their homes. In other words, the words "or any liens  
6 established hereunder" is only referring to liens authorized by the unit owner and does not  
7 give the Lytles the right to attach their Judgments to the Plaintiffs' properties. Even if this  
8 far-fetched argument were true, it is defeated by the specific words of Paragraph 24 that  
9 provides the only remedy allowed by the CC&Rs:  
10

11  
12       Except as otherwise provided herein, Subdivider or any owner or owners of  
13       any of the lots shall have the right to enforce any or all of the provisions of the  
14       covenants, conditions and restrictions upon any other owner or owners. In  
15       order to enforce said provision or provisions, any appropriate judicial  
      proceeding in law or in equity may be initiated and prosecuted by any such lot  
      owner or owners against any other owner or owners.

16 Ex. 5, attached the SJ Motion, at 4. This provision provides the mechanism by which a  
17 lawsuit may be brought with regard to the Original CC&Rs. The Plaintiffs were never  
18 named parties to any litigation between the Association and the Lytles. In fact, when several  
19 of the Plaintiffs were originally named in one of the lawsuits, Defendants filed an Errata and  
20 specifically removed them from the caption. Therefore, the Lytles deliberately chose to not  
21 bring such a lawsuit, despite the clear availability of such a claim under NRS 116.4117. If  
22 the Court does interpret the CC&Rs as a contract, the words that the Lytles have chosen to  
23 take out of context to imply a lien right against the individual homeowners simply cannot  
24 possibly create such rights.  
25

26  
27       Defendants also argue that since all the lots are subject to the CC&Rs that somehow  
28 judgment against the Association is enforceable against all property owners. However, such

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

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

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

14  
15 Defendants again point to NRS 116.3117 and the Amended CC&Rs which they  
16 assert allow them this privilege. However, this position is directly contradictory to the  
17 position they took in the NRED 1, 2 and 3 litigations. In the previous litigations, the Lytles  
18 specifically sought and obtained declaratory relief that the Association was a "a limited  
19 purpose association under NRS 116.1201, is not a Chapter 116 "unit-owners' association"  
20 and is relegated to only those specific duties and powers set forth in paragraph 21 of the  
21 Original CC&R's and NRS 116.1201." See Ex. 2 attached to the SJ Motion, ¶ 19. As a  
22 limited purpose association, NRS 116 does not apply to its actions. See NRS 116.1201(2)  
23 (specifically excluding the application of NRS 116 to limited purpose associations).  
24

25  
26 In any event, the Lytles have not demonstrated any law or fact that makes the  
27 Association and the Plaintiffs one and the same. They have not demonstrated any law or fact  
28 that allows a judgment against the Association to be recorded against the Plaintiffs'

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

4  
5 **IV.**

6 **CONCLUSION**

7 For the foregoing reasons, the Plaintiffs respectfully request that this Court deny the  
8 Lytles Countermotion for Summary Judgment and grant the Plaintiffs Motion for Summary  
9 Judgment, or in the alternative, Motion for Judgment on the Pleadings expunging and  
10 striking the Abstracts of Judgment recorded against the Plaintiffs' Properties, restraining and  
11 enjoining the Lytles from selling or attempting to sell the Plaintiffs' Properties and from  
12 taking any action in the future against the Plaintiffs or their Properties based upon any  
13 litigation the Lytles have commenced against the Association.  
14

15  
16 DATED this 21st day of February, 2018.

17 CHRISTENSEN JAMES & MARTIN

18 By: /s/ Laura J. Wolff, Esq.

19 Laura J. Wolff, Esq.

20 Nevada Bar No. 6869

21 7440 W. Sahara Avenue

22 Las Vegas, NV 89117

23 Tel.: (702) 255-1718

24 Fax: (702) 255-0871

25 *Attorneys for Plaintiffs*  
26  
27  
28

**CERTIFICATE OF SERVICE**

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

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

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

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

/s/ Natalie Saville  
Natalie Saville

1 **DECL**  
 2 **CHRISTENSEN JAMES & MARTIN**  
 3 WESLEY J. SMITH, ESQ.  
 Nevada Bar No. 11871  
 4 LAURA J. WOLFF, ESQ.  
 Nevada Bar No. 6869  
 5 7440 W. Sahara Avenue  
 Las Vegas, Nevada 89117  
 6 Tel.: (702) 255-1718  
 Facsimile: (702) 255-0871  
 7 Email: wes@cjmlv.com; ljw@cjmlv.com  
*Attorneys for Plaintiffs*

8 **EIGHTH JUDICIAL DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 SEPTEMBER TRUST, DATED MARCH  
 23, 1972; GERRY R. ZOBRIST AND  
 11 JOLIN G. ZOBRIST, AS TRUSTEES OF  
 THE GERRY R. ZOBRIST AND JOLIN G.  
 12 ZOBRIST FAMILY TRUST; RAYNALDO  
 G. SANDOVAL AND JULE MARIE  
 13 SANDOVAL GEGEN, AS TRUSTEES OF  
 THE RAYNALDO G. AND EVELYN A.  
 14 SANDOVAL JOINT LIVING AND  
 DEVOLUTION TRUST DATED MAY 27,  
 15 1992; and DENNIS A. GEGEN AND  
 JULIE S. GEGEN, HUSBAND AND  
 16 WIFE, AS JOINT TENANTS,

17 Plaintiffs,

18 vs.

19 TRUDI LEE LYTLE AND JOHN ALLEN  
 20 LYTLE, AS TRUSTEES OF THE LYTLE  
 TRUST; JOHN DOES I through V; and  
 ROE ENTITIES I through V, inclusive,

21 Defendants.

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

**DECLARATION OF COUNSEL IN  
 SUPPORT OF PLAINTIFFS' REPLY TO  
 DEFENDANTS' OPPOSITION TO THE  
 MOTION FOR SUMMARY JUDGMENT,  
 OR, IN THE ALTERNATIVE, MOTION  
 FOR JUDGMENT ON THE PLEADINGS  
 AND OPPOSITION TO PLAINTIFFS'  
 COUNTERMOTION FOR SUMMARY  
 JUDGMENT**

22 **DECLARATION OF LAURA J. WOLFF, ESQ.**

23 STATE OF NEVADA)

24 :ss.

25 COUNTY OF CLARK)

26  
 27 Laura J. Wolff, Esq., being first duly sworn and under penalty of perjury of the laws of  
 28 the United States of America and the State of Nevada:

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

000597

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

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

7           3.       I am an Associate Attorney at Christensen James & Martin, counsel for the  
8 Plaintiffs, September Trust, dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and  
9 Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist  
10 Trust"), Raynaldo G. Sandoval and Jule Marie Sandoval Gegen, as Trustees of the Raynaldo G.  
11 and Evelyn A. Sandoval Joint Living and Devolution Trust Dated May 27, 1992 ("Sandoval  
12 Trust"), and Dennis A. Gegen and Julie S. Gegen, Husband and Wife as Joint Tenants (hereafter  
13 "Gegen") (hereafter September Trust, Zobrist Trust, Sandoval Trust and Gegen may be  
14 collectively referred to as "Plaintiffs").  
15

16           4.       I make this Declaration in support of Plaintiffs' Reply to Defendants' Opposition  
17 to the Motion for Summary Judgment, or, in the Alternative, Motion for Judgment on the  
18 Pleadings and Opposition to Plaintiffs' Countermotion for Summary Judgment ("Opposition").  
19

20           5.       A true and correct copy of the Appellants' Opening Brief, Supreme Court No.  
21 73039, is attached to the Opposition as Exhibit 16.

22           6.       I reviewed the online records of the Eighth Judicial District Court, Clark County  
23 Nevada, and I found and printed records from that website, including the pertinent parts of the  
24 Case Information for Case No.A-09-593497-C, Case No. A-10-631355-C and Case No. A-15-  
25 716420-C. A true and correct copy of these records is attached to the Opposition as Exhibit  
26 "17".  
27

28

000599

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

# Exhibit 16

000600

000600

# Exhibit 16

## IN THE SUPREME COURT OF THE STATE OF NEVADA

TRUDI LEE LYTLE; AND JOHN ALLEN  
LYTLE, AS TRUSTEES OF THE LYTLE  
TRUST,

Appellant ,

v.

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

Respondents .

**Supreme Court No.: 73039**

District Court Case No.: A-16-747800-C

Electronically Filed

Jan 24 2018 09:55 a.m.

**APPELLANTS' OPENING BRIEF**

Elizabeth A. Brown

Clerk of Supreme Court

**Appeal**

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

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**Appellants' Opening Brief**

**(Docket 73039)**

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**RICHARD HASKIN**

Nevada Bar No. 11592

**GIBBS, GIDEN, LOCHER, TURNER,  
SENET, & WITTBRODT, LLP**

1140 N. Town Center Drive

Las Vegas, Nevada 89144

(702) 836-9800

*Attorneys for Appellants*

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## **Appellant's Opening Brief**

### **Jurisdictional Statement**

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

### **Routing Statement**

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

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## Issue Presented

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

## Statement of the Case

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

### A. Statement of Facts

#### 1. The Association

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

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

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

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

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

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

## 2. The Underlying Litigation

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

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

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

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

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

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

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

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

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

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

### 3. The Financial Burden Of The Litigation Against The Appellants

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

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

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

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

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

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

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

#### **B. Procedural History**

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

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

<sup>2</sup> The Association did not appeal the district court's orders regarding damages, attorneys' fees or costs.

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

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

### Summary of Argument

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

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

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

## **Argument**

### **I. THE DISTRICT ERRED IN GRANTING THE PERMANENT INJUNCTION**

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

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

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

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

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

215 P.3d at 31.

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

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

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

hardships to the relative parties and others, and the public interest.” *Univ. and Comm. College Systems of Nevada*, 120 Nev. at 721, 100 P.3d at 187, *see also* *S.O.C.*, 117 Nev. at 407, 23 P.3d at 246 (2001); *Dangberg Holdings*, 115 Nev. at 142–43, 978 P.2d at 319.

In the present case, the issue before the district court, and indeed this Supreme Court, is the Plaintiffs’/Respondents’ likelihood of success on the merits. Respondents, ultimately, cannot make such a showing because NRS 116.3117, and other provisions of the Common-Interest Ownership Act authorize Appellants to lien Respondents’ properties, as set forth below.

1. **The District Court Erred In Finding That NS 116.3117 Does Not Apply To The Association Because The Association Is A Limited Purpose Association**

The district court found that: (1) “The Association is a ‘limited purpose association’ as referenced in NRS 116.1201(2); and (2) “As a limited purposes association, NRS 116.3117 is not applicable to the Association.” Amended Order, FOF No. 9, COL No. 2, AA000552, 000553. The second of these conclusions is erroneous.

Appellants are within their rights, as judgment creditors of the Association, to record a lien against each unit within the Association because (1) NRS 116.3117 provides this specific right to judgment creditors of a unit owners’ association, (2) Appellants may invoke all of the rights set forth in the entirety of Chapter 116

because the Association invoked such rights during the underlying litigation (and prior thereto), and (3) Chapter 116's statutory mechanism provides such rights to Appellants.

a. **NRS 116.3117 Permits A Judgment Creditor To Record A Lien Against All Units Within An Association**

When a statute is facially clear, the Court should give effect the statute's plain meaning. *D.R. Horton, Inc. v. Eighth Judicial Dist. Court (First Light I)*, 123 Nev. 468, 476, 168 P.3d 731, 737 (2007). "[W]hen a term is defined in NRS Chapter 116, the statutory definition controls and any definition that conflicts will not be enforced." *Boulder Oaks Cmty. Ass'n v. B & J Andrews Enters., LLC*, 125 Nev. 397, 406, 215 P.3d 27, 32 (2009). Further, NRS 116.003 states that "the words and terms defined in NRS 116.005 to 116.095, inclusive, have the meanings ascribed to them in those sections." *Id.*

NRS 116.3117 provides, in pertinent part:

1. In a condominium or planned community:
  - (a) Except as otherwise provided in paragraph (b), **a judgment for money against the association**, if a copy of the docket or an abstract or copy of the judgment is recorded, is not a lien on the common elements, but **is a lien in favor of the judgment**

**lienholder against all of the other real property of the association and all of the units in the common-interest community at the time the judgment was entered.** No other property of a unit's owner is subject to the claims of creditors of the association.

[Emphasis added.] Quite succinctly, Nevada's Common-Interest Ownership Act, set forth in Chapter 116, provides a judgment creditor has a lien "against all of the units in the common-interest community at the time the judgment was entered." NRS 116.3117(1)(a).

Moreover, to the extent there can be any doubt as to the operation of NRS 116.3117, the comments to Section 3-117 of the Uniform Common Interest Ownership Act (1982) — the uniform act upon which NRS Chapter 116 is based — reinforce that which is already clear from the plain language of the statute: "the Act makes the judgment lien a direct lien against each individual unit . . ." See UCIOA § 3-117, cmt. 2, *see also, e.g., Ensberg v. Nelson*, 320 P.3d 97, 102 (Wash. Ct. App. 2013) ("[B]y statute, a condominium association is a lien in favor of the judgment lienholder against all of the units in the condominium."); *Summit House Condominium v. Com.*, 523 A.2d 333, 336 (Pa. 1987) ("[A] judgment against the Council would have constituted a lien against each individual condominium unit owner."); *Interlaken Service Corp. v. Interlaken Condominium Ass'n, Inc.*, 588 N.W.2d 262, 266 (Wisc. 1998) ("[A]ny money judgment obtained by [the plaintiff

as against the association] would result in a lien against each of the condominium units.”).

The purpose of the statute, however, is not to provide a remedy to creditors. Rather, it protects unit owners within an association and limits the extent to which a creditor can collect on a judgment against an association as to each unit owner. NRS 116.3117 provides that a creditor must first collect against any security interest the creditor may have in common elements before pursuing units. NRS 116.3117(1)(b).

2. **In The Present Case, The Association Is Afforded All Rights And Remedies Of NRS, Chapter 116 Because Prior To Final Determination In The Underlying Litigation, The Association Enjoyed Such Benefits To The Detriment Of Appellants**

With due respect to the district court, its most egregious and fundamental error was in declaring that because the Association is a *limited purpose association*, Appellants are not entitled to the protections, rights and remedies set forth in Chapter 116, including NRS 116.3117 (cited above). Amended Order, FOF No. 9, COL No. 2, AA000552, 000553. For a myriad of reasons set forth herein, NRS 116.3117 applies in this case and affords Appellants the right to lien Respondents properties.

a. **The Different Types Of Common Interest**

**Communities**

The term “homeowners’ association” is often misused and, indeed, in the State of Nevada has no true statutory definition. Rather, a “homeowners’ association” is more of an informal, catch-all term for all types of common interest communities.

Chapter 116 applies to all types of governing bodies of residential common interest communities created in Nevada. NRS 116.1201. A “common-interest community” is defined as “real estate described in a declaration with respect to which a person, by virtue of the person’s ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or services or other expenses related to, common elements, other units or other real estate described in that declaration.” NRS 116.021. The types of common interest communities include: (1) unit owners’ association, (2) limited purpose associations (NRS 116.1201(2)(a)), (3) small planned communities (NRS 116.1203), (4) nonresidential planned communities (NRS 116.1201(2)(b)), (5) time shares (NRS 116.1201(2)(e)), and condominiums (NRS 116.027).

Chapter 116 applies to “all common interest communities” created within Nevada, with defined limitations for limited purpose associations, small planned communities, and nonresidential planned communities. NRS 116.1201.

b. As The District Court Found In The Underlying Litigation, From July 3, 2007 Through July 29, 2013, The Association Was A Unit Owners' Association, For Which The Entirety Of NRS, Chapter 116 Applied

While the district court in the Underlying Litigation held that the Association was a limited purpose association (RJN for Opp., Order Granting Summary Judgment, AA000155 – 000156, AA000172 - 000173), the district court in that case found that the Amended CC&Rs were recorded on July 3, 2007, in the office of the Recorder for Clark County, Nevada (*Id.* at FOF 35, AA000171) and from July 3, 2007, through July 29, 2013, when the district court granted Appellants' summary judgment in that case, the Association was a full-blown unit owners' association, subject to and taking advantages of all rights, privileges and remedies afforded by the entirety of Chapter 116, including the right to assess and initiate Chapter 116 foreclosure proceedings for failure to pay assessments, which is exactly what the Association did to Appellants. *See generally* RJN for Opp., Order Granting Summary Judgment, AA000155 – 000156, AA000167 - 000177.<sup>3</sup> The Amended CC&Rs adopt Chapter 116 of the Nevada Revised Statutes. RJN for Opp., Amended CC&Rs, at Article I, AA000155 – 000156, AA000226. The

<sup>3</sup> The Association, in adopting the Amended CC&Rs, stated that one of the basis for such adoption was to "conform to NRS Chapter 116." Order Granting Summary Judgment, AA \_\_\_\_.

Amended CC&Rs define the Association pursuant to the Uniform Common-Interest Ownership Act. *Id.* at 1.1, AA000226. The Amended CC&Rs routinely reference Chapter 116 of the Nevada Revised Statutes. *See, e.g., id.* at 1.13, 1.14, 1.30, 8.1, 10.3 (referring to the lien statutes codified in Chapter 116), AA000226 – 000230, 000241, 000242.

In granting Appellants’ Motion for Attorneys’ Fees, the district court in the Underlying Litigation cited *Mackintosh*, 113 Nev. at 405-406, 935 P.2d at 1162, and held that Appellants could recover attorneys’ fees under the Amended CC&Rs because that document, while declared *void ab initio* by the district court, was in effect and enforced by the Association against the Appellants at all times during the underlying litigation. *See generally*, RJN for Opp., Order Granting Attorneys’ Fees, AA000155 – 000156, 000186 - 000189.

In *Mackintosh, supra*, the purchasers of real property sued a savings and loan association for rescission of a residential property purchase agreement. *Mackintosh*, 113 Nev. at 396-397, 935 P.2d at 1157. The Supreme Court upheld a district court’s granting of summary judgment and determination that the purchasers had rescinded the purchase agreement. *Id.* 113 Nev. at 405-406, 935 P.2d at 1162. However, the Supreme Court held the district court improperly denied the purchasers’ request for attorneys’ fees, which request was based on the attorney fee provision in the rescinded agreement. *Id.* The district court, in denying attorneys’ fees stated that the rescinded agreement was “void from its date

of inception, just as if the contract had never existed.” *Id.* The Supreme Court disagreed and cited a Florida Supreme Court case, *Katz v. Van Der Noord*, 546 So.2d 1047 (Fla. 1989), which held:

We hold that when parties enter into a contract and litigation later ensues over that contract, attorney's fees may be recovered under a prevailing-party attorney's fee provision contained therein even though the contract is rescinded or held to be unenforceable. The legal fictions which accompany a judgment of rescission do not change the fact that a contract did exist. It would be unjust to preclude the prevailing party to the dispute over the contract which led to its rescission from recovering the very attorney's fees which were contemplated by that contract.

*Id.* at 1049.

Similarly, in the present case, the “legal fictions” that accompany the district court’s determination in the Underlying Litigation that the Amended CC&Rs were *void ab initio* cannot change the fact that they did, indeed, exist from July 3, 2007, through July 29, 2013, and were enforced against Appellants.

The foregoing is akin to the evidentiary “sword and shield” doctrine. Therein, it is held that a party may not use a privilege as both a sword to assert a claim and a shield to protect the content related to the claim. *Molina v. State* 120 Nev. 185, 194, 87 P.3d 533, 539 (2004). A party attempting to enforce a contract

against another cannot argue that a court's determination that it was void shields the party from the provisions that would be detrimental, *e.g.* an attorneys' fee provision. Or, in the present case, members of the Association should not be permitted to shield themselves from certain provisions of Chapter 116, namely NRS 116.3117, once the district court declared the Amended CC&Rs void after years of those same Amended CC&Rs being recorded and enforced against Appellants. In fact, the Amended CC&Rs' restrictions were so severe that they prevented Appellants from building their dream home in the Rosemere Estates community and thrust Appellants into years of litigation that exhausted Appellants' retirement savings and created emotional turmoil. RJN for Opp., Order Granting Summary Judgment, FOF Nos. 25 – 31, AA000155 – 000156, AA000170 - 000171. Indeed, Appellants, as the only undeveloped lot, were the only targets of the Amended CC&Rs and the prohibitive building restrictions. *Id.*

There are other instances during which the Association took clear advantage of the entirety of Chapter 116 during this operative time period despite a subsequent finding that the Association is a limited purpose association and the Amended CC&Rs are void. For example, the Association filed countersuits against Respondents, something a limited purpose association is not permitted to do. NAC 116.090(1)(c)(1), (prohibiting a limited purpose association from enforcing restrictions against unit owners). The Association moved to dismiss and had the Complaint dismissed in the Underlying Litigation, purportedly as a result

of a failure to timely file under Chapter 38, which does not apply to limited purpose associations.

Appellants obtained a judgment against the Association due to the Association's action taken in order to both defend and impose its position as a unit owners' association. During the entire pendency of the Underlying Litigation (and indeed well before), the Association operated pursuant to the statutory luxuries afforded to it as a litigant by NRS Chapter 116. And had the Association, and not Appellants, prevailed in the Underlying Litigation, the Association would enjoy all of the benefits as a judgment creditor against Appellants, including the right to lien Appellants' property and foreclose thereon. The district court's ruling in the instant case provides the Association with forgiveness to utilize NRS Chapter 116 and the Amended CC&Rs as swords to impose the Association's will during the Underlying Litigation and prior thereto, but as shields from liability and collection once the Association's position was declared invalid. The public policy underlying *Mackintosh* and its progeny is that such two-faced positions cannot stand the test of equities.

c.     **NRS 116.3117 Applies To Limited Purpose**  
           **Associations**

As set forth in Chapter 116 and explained above, the Association is a common interest community consisting of nine (9) units, as that term is defined by Chapter 116, and organized as a limited purpose association. RJN for Opp., Order

Granting Summary Judgment, FOF No. 6, COL Nos. 7 – 19, AA000155 – 000156, AAA000167 - 000174, *see also* NRS 116.021, NRS 116.093. NRS

116.1201(2)(a)(4) provides, in pertinent part, that Chapter 16 does not apply to a limited purpose association, “except that a limited purpose association shall comply...with the provisions of NRS 116.4101 to 116.412.” Included within the scope of these provisions is NRS 116.4117, which addresses civil actions for damages for failure or refusal to comply with provisions of Chapter 116 or an association’s governing documents. NRS 116.4117(2) provides:

Subject to the requirements set forth in NRS 38.310 and except as otherwise provided in NRS 116.3111, a civil action for damages or other appropriate relief for a failure or refusal to comply with any provision of this chapter or the governing documents of an association may be brought:

(a) By the association against:

- (1) A declarant;
- (2) A community manager; or
- (3) A unit’s owner.

(b) By a unit’s owner against:

- (1) The association;
- (2) A declarant; or

(3) Another unit's owner of the association.

(c) By a class of units' owners constituting at least 10 percent of the total number of voting members of the association against a community manager.

Thus, an owner in a limited purpose association may pursue a civil action against an association as set forth in NRS 116.4117, as Appellants did in the Underlying Litigation.

Following the linear statutory reference, then, from NRS 116.4117, NRS 116.3111(3) provides, among other things, that "[l]iens resulting from judgments against the association are governed by NRS 116.3117." NRS 116.3117 then provides:

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

///

///

As a judgment creditor and lienholder in a proper civil action brought under NRS 116.4117, Appellants have a lien on all units in the Association, a common interest community. Pursuant to this right as set forth in NRS, Chapter 116, Sections 4117(2), 3111 and 3117, Appellants recorded the abstracts of judgment.

3. **General Common-Interest Community Principles Define The Association As Including Each Unit Therein, And Appellants May Record An Abstract Against Each Unit**

NRS 17.150(2) provides, in pertinent part:

A transcript of the original docket or an abstract or copy of any judgment or decree of a district court of the State of Nevada or the District Court or other court of the United States in and for the District of Nevada, the enforcement of which has not been stayed on appeal, certified by the clerk of the court where the judgment or decree was rendered, may be recorded in the office of the county recorder in any county, **and when so recorded it becomes a lien upon all the real property of the judgment debtor not exempt from execution in that county**, owned by the judgment debtor at the time, or which the judgment debtor may afterward acquire, until the lien expires.

[Emphasis added.]

In recording the abstracts of judgment against the units within the Association, the abstracts became a lien upon all the real property of the Association, as the judgment debtor. Each unit, owned or unowned, within the Association is property of the Association, as set forth in Chapter 116. NRS 116.3117 mirrors the foregoing by encapsulating the lien framework within a single statute.

NRS 116.021 defines a “common interest community” as all “real estate described in a declaration with respect to which a person, by virtue of the person’s ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or services or other expenses related to, common elements, other units or other real estate described in that declaration.” NRS 116.093 defines a “unit” as the “physical portion of the common-interest community designated for separate ownership or occupancy...” Thus, an association, or common interest community, includes each unit in the community, including those owned by third parties.

This Nevada Supreme Court concluded as much in granting standing to homeowners’ associations to file claims on behalf of unit owners in construction defect cases. In *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 125 Nev. 449, 215 P.3d 697 (2009), the Supreme Court held that “provisions of NRS Chapter 116, among other sources, demonstrate that a common-interest community includes individual units...” *Id.*, 125 Nev. at 451, 215 P.3d at 699. Thus, the

Supreme Court concluded that a homeowners' association has standing to file representative actions on behalf of its members for construction defects of units.

NRS 116.3117, clarifies that a judgment may be recorded against each unit. This is not a special rule of any sort in favor of creditors, rather it adds statutory clarity that a judgment against the common-interest community can be recorded against all property within that community, including units defined as being included in the community. These definitions are echoed in the Uniform Common Interest Ownership Act, under Section 1-203(9) and 1-203(35).

**a. The Original CC&Rs Defines The Association As Including Each Lot Therein**

Pursuant to the Original CC&Rs, a lien or judgment against the Association established under the Original CC&Rs attaches to each lot within the Association. As a result, the individual property of the owners within the Association, defined as Lots 1 through 9, is subject to lien.

The Original CC&Rs provide as follows:

WHEREAS, it is the desire and intention of Subdivider to sell the land described above and to impose on it mutual, beneficial covenants, conditions and restrictions under a general plan or scheme of improvement for the benefit of all the land described above and the future owners of the lots comprising said land.

RJN for Opp., Original CC&Rs, ¶2, AA000155 – 000156, 000159. (referring to the “Lots 1 through 9 of Rosemere Court” in the definition above, thereby including Respondents lots, which Respondents do not dispute).

A breach or violation of these CC&R’s or any re-entry by reason of such breach **or any liens established hereunder** shall not defeat or render invalid or modify in any way the lien of any mortgage or deed of trust made in good faith and for value **as to said lots or PROPERTY or any part thereof**; that these CC&R’s shall be binding and effective against any owner of said PROPERTY whose title thereof is acquired by foreclosure, trustee’s sale or otherwise.

*Id.* at ¶4, AA000160 (emphasis added).

The Original CC&Rs were recorded against each of the nine (9) lots within the Association, and each owner, or prospective owner, including Respondents, purchased property with record and actual notice of the foregoing rights and remedies.<sup>4</sup> RJN for Opp., Order Granting Summary Judgment, FOF No. 1, AA000155 - 000156, 000167.

<sup>4</sup> While CC&Rs are a restrictive covenant, the CC&Rs are interpreted like a contract. *See, e.g., Diaz v. Ferne*, 120 Nev. 70, 73, 84 P.2d 664, 665-66 (2004) (stating that the CC&Rs are a restrictive covenant, which is interpreted like a contract); *see also Lee v. Savalli Estates Homeowners Ass’n*, 2014 WL 4639148 (Nev. Sept. 16, 2014) (affirming *Diaz* that the rules of construction governing contracts apply to the CC&Rs). “A court should not interpret a contract so as to make meaningless its provisions.” *Phillips v. Mercer*, 94 Nev. 279, 282, 597 P.2d 174, 176 (1978).

The second provision cited above specifically attaches liens established under the Original CC&Rs “to said lots or Property.” The attorneys’ fee award, in relevant part, specifically finds Appellants’ lien or judgment is established under the Original CC&Rs. RJN for Opp., Order Granting Attorneys’ Fees, at 2:1-15, AA000155 – 000156, AA000187. If liens under the Original CC&Rs could not attach to the lots, there would be absolutely no need to include this provision, *i.e.* there would be no need for the Original CC&Rs to state that such a lien could not extinguish the first deed of trust or any other mortgage. Again, the Association has no property to even secure any loan as the only property that exists is Lots 1 through 9, which includes Respondents’ properties. Nowhere in the Original CC&Rs is there any inclusion of property owned by the Association or subject to the Original CC&Rs other than “Lots 1 through 9.” The district court’s finding that a lien against the Association does not attach to Respondents properties, which is included within “Lots 1 through 9,” renders these provisions meaningless. *Phillips*, 94 Nev. at 282, 597 P.2d at 176.

Nothing under this provision distinguishes Appellants’ liens or judgment pursuant to the attorneys’ fees provision from any other provision or lien or judgment in the Original CC&Rs. The Original CC&Rs simply state “any liens established hereunder.” RJN for Opp., Original CC&Rs, AA000155 – 000156, 000159. This necessarily includes Appellants’ liens.

## II. CONCLUSION

For the reasons set forth above, Appellants Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust, request this Court reverse the district court's order granting a permanent injunction and remand that case back to the district court.

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

GIBBS, GIDEN, LOCHER, TURNER, SENET &  
WITTBRODT, LLP

By: 

Richard E. Haskin  
Nevada Bar No. 11592  
1140 N. Town Center Drive, Suite 300  
Las Vegas, NV 89144  
(702) 836-9800  
rhaskin@gibbsgiden.com  
*Attorneys for Appellants*

## Certificate of Compliance

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

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

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

[ ] Does not exceed 30 pages; or

[ X ] Proportionately spaced, has a typeface of 14 points or more and contains **7,328** words.

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

DATED this 24<sup>th</sup> day of January 2018.



---

Richard E. Haskin  
*Counsel for Appellants*

## Certificate of Service

### 1. Electronic Service:

I hereby certify that on this date, the 24th day of January 2018, I submitted the foregoing **Appellant's Opening Brief (Docket 73039)** for filing and service through the Court's eFlex electronic filing service. According to the system, electronic notification will automatically be sent to the following:

Daniel T. Foley, Esq.  
FOLEY & OAKS  
626 S. 8<sup>th</sup> Street  
Las Vegas, Nevada 89101

Christina H. Wang, Esq.  
FIDELITY NATIONAL LAW GROUP  
8363 W. Sunset Road, Suite 120  
Las Vegas, Nevada 89113

### 2. Traditional Service:

Daniel T. Foley, Esq.  
FOLEY & OAKS  
626 S. 8<sup>th</sup> Street  
Las Vegas, Nevada 89101

Christina H. Wang, Esq.  
FIDELITY NATIONAL LAW GROUP  
8363 W. Sunset Road, Suite 120  
Las Vegas, Nevada 89113

  
\_\_\_\_\_  
RICHARD E. HASKIN

# Exhibit 17

# Exhibit 17

Case Information

A-15-716420-C | John Lytle, Plaintiff(s) vs. Rosemere Estates Property Owners Association, Defendant(s)

Case Number	Court	Judicial Officer
A-15-716420-C	Department 30	Wiese, Jerry A
File Date	Case Type	Case Status
04/02/2015	Other Civil Matters	Closed

Party

Plaintiff Lytle, John Allen	Active Attorneys ▼ Lead Attorney Haskin Esq, Richard Edward Retained
Plaintiff Lytle, Trudi Lee	Active Attorneys ▼ Lead Attorney Haskin Esq, Richard Edward Retained
Plaintiff Lytle Trust	Active Attorneys ▼ Lead Attorney Haskin Esq, Richard Edward Retained

**Plaintiff****Attorney:** Haskin Esq, Richard Edward

11/04/2015 Stipulation ▼

Comment

Stipulation to Lift Stay and Set Status Conference

11/05/2015 Notice of Entry ▼

Comment

Notice of Entry of Stipulation to Lift Stay and Set Status Conference

11/25/2015 Individual Case Conference Report ▼

Comment

Plaintiff John Allen Lytle and Trudi Lee Lytle, as Trustees of The Lytle Trust's Individual Case Conference Report

12/14/2015 Motion to Dismiss ▼

Comment

Renewed Motion to Dismiss

01/04/2016 Opposition to Motion ▼

Comment

Plaintiffs' Opposition to Renewed Motion to Dismiss

01/05/2016 Minute Order ▼

Judicial Officer

Bulla, Bonnie

Hearing Time

7:45 AM

Result

Matter Heard

01/06/2016 Order Shortening Time ▼

Comment

Motion to Withdraw as Attorney of Record on Order Shortening Time

01/07/2016 Receipt of Copy ▼

Comment  
Receipt of Copy of Motion to Withdraw as Attorney of Record  
on Order Shortening Time

01/07/2016 Reply in Support ▼

Comment  
Reply in Support of Renewed Motion to Dismiss

01/13/2016 Affidavit ▼

Comment  
Affidavit of Service

01/14/2016 Motion to Dismiss ▼

Judicial Officer  
Wiese, Jerry A.

Hearing Time  
9:00 AM

Result  
Matter Continued

Comment  
Defendant Rosemere Estates Property Owners Association's  
Renewed Motion to Dismiss

Parties Present ▲  
Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

01/14/2016 Motion to Withdraw as Counsel ▼

Judicial Officer  
Wiese, Jerry A.

Hearing Time  
9:00 AM

Result  
Motion Granted

Comment

Ryan W. Reed, Esq.'s Motion to Withdraw as Attorney of Record on Order Shortening Time

Parties Present ▲

Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

01/14/2016 All Pending Motions ▼

Judicial Officer

Wiese, Jerry A.

Hearing Time

9:00 AM

Result

Matter Heard

Parties Present ▲

Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

01/26/2016 Order to Withdraw as Attorney of Record ▼

Comment

Order Granting Motion to Withdraw as Attorney of Record on Order Shortening Time

01/27/2016 Notice of Entry of Order ▼

Comment

Notice of Entry of Order Granting Motion to Withdraw as Attorney of Record on Order Shortening Time

03/31/2016 Status Check ▼

Judicial Officer  
Wiese, Jerry A.

Hearing Time  
9:00 AM

Result  
Matter Heard

Parties Present ▲  
Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

04/07/2016 Declaration ▼

Comment  
Declaration of Trudi Lee Lytle in Support of Motion for  
Summary Judgment

04/07/2016 Motion for Summary Judgment ▼

Comment  
Plaintiff's Motion for Summary Judgment on Order  
Shortening Time

04/07/2016 Request for Judicial Notice ▼

Comment  
Request for Judicial Notice in Support of Plaintiff's Motion for  
Summary Judgment on Order Shortening Time

05/10/2016 Motion for Summary Judgment ▼

Judicial Officer  
Wiese, Jerry A.

Hearing Time  
9:00 AM

Result  
Minute Order - No Hearing Held

Comment  
Plaintiff's Motion for Summary Judgment on Order Shortening  
Time

05/10/2016 Notice ▼

Comment

Notice of Vacating Hearing

06/20/2016 Order to Statistically Close Case ▼

Comment

Order to Statistically Close Case

09/14/2017 Order Granting Summary Judgment ▼

Comment

Order Granting Summary Judgment

09/15/2017 Notice of Entry of Order ▼

Comment

Notice of Entry of Order Granting Summary Judgment

10/02/2017 Memorandum of Costs and Disbursements ▼

Comment

Verified Memorandum of Costs

10/02/2017 Affidavit in Support ▼

Comment

Affidavit of Richard E. Haskin, Esq. in Support of Plaintiffs'  
Motion for Attorneys' Fees and Costs

10/02/2017 Motion for Attorney Fees and Costs ▼

Comment

Plaintiffs' Motion for Attorneys' Fees and Costs

11/02/2017 Motion for Attorney Fees and Costs ▼

Judicial Officer  
Wiese, Jerry A.

Hearing Time  
9:00 AM

Comment

Plaintiff's Motion for Attorney Fees and Costs

Case Information

A-09-593497-C | John Lytle, Plaintiff(s) vs. Rosemere Estates Property Owners Association, Defendant(s)

Case Number	Court	Judicial Officer
A-09-593497-C	Department 12	Leavitt, Michelle
File Date	Case Type	Case Status
06/26/2009	Other Civil Filing	Closed

Party

Plaintiff  
Lytle, John Allen

Active Attorneys ▼  
Attorney  
Sterling, Beau  
Retained

Attorney  
Martin, David J.  
Retained

Attorney  
Vilkin, Richard J.  
Retained

Attorney  
Haskin Esq,  
Richard Edward  
Retained

Comment  
Case Appeal Statement (Amended/Supplemental)

05/29/2014 Order Denying Motion ▼

Order Denying Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorneys' Fees

Comment  
Order Denying Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorneys' Fees

05/30/2014 Notice of Entry of Order ▼

Notice of Entry of Order Denying Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attor

Comment  
Notice of Entry of Order Denying Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorneys' Fees

11/26/2014 Recorders Transcript of Hearing ▼

Proceedings of Transcript Re: Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorne

Comment  
Proceedings of Transcript Re: Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorneys' Fees Monday, April 28, 2014

11/20/2015 NV Supreme Court Clerks Certificate/Judgment - Affd/Rev Part ▼

NV Supreme Court Clerks Certificate/Judgment - Affd/Rev Part

Comment  
Nevada Supreme Court Clerk's Certificate Judgment - Affirmed (63942); Affirmed in Part, Reversed in Part and Remand (65294); Vacated and Remand (65721)

01/06/2016 Order Shortening Time ▼

Motion to Withdraw as Attorney of Record on Order Shortening Time

Comment  
Motion to Withdraw as Attorney of Record on Order Shortening Time

01/06/2016 Receipt of Copy ▼

Receipt of Copy of Motion to Withdraw as Attorney of Record on  
Order Shortening Time

Comment

Receipt of Copy of Motion to Withdraw as Attorney of Record  
on Order Shortening Time

01/13/2016 Affidavit ▼

Affidavit of Service

Comment

Affidavit of Service

01/25/2016 Motion to Withdraw as Counsel ▼

Motion to Withdraw as Counsel

Judicial Officer

Leavitt, Michelle

Hearing Time

8:30 AM

Result

Granted

Comment

Leach Johnson Song & Gruchow's Motion to Withdraw as Attorney  
of Record on Order Shortening Time

Parties Present ▲

Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

02/02/2016 Order Granting Motion ▼

Order Granting Motion to Withdraw as Attorney of Record on Order  
Shortening Time

Comment

Order Granting Motion to Withdraw as Attorney of Record on  
Order Shortening Time

02/22/2016 Status Check ▼

Status Check

Judicial Officer  
Leavitt, Michelle

Hearing Time  
8:30 AM

Result  
Off Calendar

Comment  
Status Check: New Counsel For Deft. Rosemere Estates Property Owners Association

Parties Present ▲  
Plaintiff: Lytle, John Allen  
  
Plaintiff: Lytle Trust

02/29/2016 Memorandum of Costs and Disbursements ▼

Plaintiffs John Allen Lytle and Trudi Lee Lytle's Verified Memorandum of Costs

Comment  
Plaintiffs John Allen Lytle and Trudi Lee Lytle's Verified Memorandum of Costs

03/24/2016 Affidavit in Support ▼

Affidavit of Richard E. Haskin, Esq. in Support of Motion for Attorneys' Fees

Comment  
Affidavit of Richard E. Haskin, Esq. in Support of Motion for Attorneys' Fees

03/24/2016 Affidavit in Support ▼

Affidavit of Thomas D. Harper in Support of Motion for Attorneys' Fees

Comment  
Affidavit of Thomas D. Harper in Support of Motion for Attorneys' Fees

03/24/2016 Affidavit in Support ▼

Affidavit of Michael J. Lemcool in Support of Motion for Attorneys' Fees

Comment  
Affidavit of Michael J. Lemcool in Support of Motion for Attorneys' Fees

03/24/2016 Affidavit in Support ▼

Affidavit of George Hand in Support of Motion for Attorneys' Fees

Comment

Affidavit of George Hand in Support of Motion for Attorneys' Fees

03/24/2016 Motion for Attorney Fees ▼

Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorneys' Fees

Comment

Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorneys' Fees

03/29/2016 Notice of Rescheduling ▼

Notice Of Rescheduling Of Hearings

Comment

Notice Of Rescheduling Of Hearings

04/26/2016 Notice ▼

Notice of Non-Opposition to Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorneys'

Comment

Notice of Non-Opposition to Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorneys' Fees

05/02/2016 Motion for Attorney Fees ▼

Motion for Attorney Fees

Judicial Officer

Leavitt, Michelle

Hearing Time

8:30 AM

Result

Granted

Comment

Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorneys' Fees

Parties Present ▲

Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

05/04/2016 Motion for Prove Up ▼

Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion to Prove-Up Damages Pursuant to Court's Or

Comment

Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion to Prove-Up Damages Pursuant to Court's Order Granting Summary Judgment

06/03/2016 Order Granting Motion ▼

Order on Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorneys' Fees

Comment

Order on Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorneys' Fees

06/06/2016 Motion ▼

Motion

Judicial Officer

Leavitt, Michelle

Hearing Time

8:30 AM

Result

Judgment for the Plaintiff

Comment

Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion to Prove-Up Damages Pursuant to Court's Order Granting Summary Judgment

Parties Present ▲

Plaintiff: Lytle, John Allen

Attorney: Haskin Esq, Richard Edward

Plaintiff: Lytle, Trudi Lee

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

06/06/2016 Notice of Entry of Order ▼

Notice of Entry of Order on Motion for Attorneys' Fees

Comment

Notice of Entry of Order on Motion for Attorneys' Fees

06/21/2016 Order ▼

Order Awarding Plaintiffs Damages Following Prove-Up Hearing

Comment

Order Awarding Plaintiffs Damages Following Prove-Up  
Hearing

06/24/2016 Notice of Entry of Order ▼

Notice of Entry of Order Awarding Damages

Comment

Notice of Entry of Order Awarding Damages

07/27/2016 Order ▼

Order Awarding Costs

Comment

Order Awarding Costs

07/28/2016 Notice of Entry of Order ▼

Notice of Entry of Order Awarding Costs

Comment

Notice of Entry of Order Awarding Costs

08/18/2016 Abstract of Judgment ▼

Abstract of Judgment

Comment

Abstract of Judgment

Case Information

A-10-631355-C | Lytle Trust, Plaintiff(s) vs. Rosemere Estates Property Owners Association, Defendant(s)

Case Number	Court	Judicial Officer
A-10-631355-C	Department 32	Bare, Rob
File Date	Case Type	Case Status
12/13/2010	Other Civil Filing	Closed

Party

Plaintiff	Active Attorneys ▼
Lytle Trust	Attorney
	Sterling, Beau
	Retained
	Lead Attorney
	Haskin Esq,
	Richard Edward
	Retained
Plaintiff	Active Attorneys ▼
Lytle, John Allen	Attorney
	Sterling, Beau
	Retained
	Lead Attorney
	Haskin Esq,

Recorder's Transcript of Proceedings: Plaintiffs' / Counter-Defendants' Motion for Relief From Judg

Comment

Recorder's Transcript of Proceedings: Plaintiffs' / Counter-Defendants' Motion for Relief From Judgment and Special Order After Judgment Pursuant to NRCP 60(B); Request for Certification of Intent to Grant Motion; and Notice of Motion 6/24/14

01/06/2016 Order Shortening Time ▼

Motion to Withdraw as Attorney of Record on Order Shortening Time

Comment

Motion to Withdraw as Attorney of Record on Order Shortening Time

01/07/2016 Receipt of Copy ▼

Receipt of Copy of Motion to Withdraw as Attorney of Record on Order Shortening Time

Comment

Receipt of Copy of Motion to Withdraw as Attorney of Record on Order Shortening Time

01/11/2016 Minute Order ▼

Minute Order

Judicial Officer

Bare, Rob

Hearing Time

3:00 AM

Result

Minute Order - No Hearing Held

01/13/2016 Affidavit ▼

Affidavit of Service

Comment

Affidavit of Service

01/14/2016 Motion to Withdraw as Counsel ▼

Judicial Officer

Bare, Rob

Hearing Time

9:00 AM

Cancel Reason

Vacated - per Law Clerk

Comment

Motion to Withdraw as Attorney of Record on Order Shortening Time

01/22/2016 NV Supreme Court Clerks Certificate/Judgment - Remanded ▼

NV Supreme Court Clerks Certificate/Judgment -Remanded

Comment

Nevada Supreme Court Clerk's Certificate Judgment - Vacated and Remand

01/22/2016 NV Supreme Court Clerks Certificate/Judgment - Affirmed ▼

NV Supreme Court Clerks Certificate/Judgment - Affirmed

Comment

Nevada Supreme Court Clerk's Certificate Judgment - Affirmed

02/05/2016 Ex Parte Motion ▼

John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust's Ex Parte Motion for Release

Comment

John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust's Ex Parte Motion for Release of Bond

02/11/2016 Errata ▼

Notice of Errata Re: John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust's Ex Part

Comment

Notice of Errata Re: John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust's Ex Parte Motion for Release of Bond

02/12/2016 Order to Withdraw as Attorney of Record ▼

Order Granting Motion to Withdraw as Attorney of Record on Order Shortening Time

## Comment

Order Granting Motion to Withdraw as Attorney of Record on  
Order Shortening Time

02/12/2016 Notice of Entry of Order ▼

Notice of Entry of Order Granting Motion to Withdraw as Attorney of  
Record on Order Shortening Time

## Comment

Notice of Entry of Order Granting Motion to Withdraw as  
Attorney of Record on Order Shortening Time

02/19/2016 Order ▼

Order Releasing Cash Bond in the Amount of \$123,000.00 to  
Plaintiffs John Allen Lytle and Trudi Lyt

## Comment

Order Releasing Cash Bond in the Amount of \$123,000.00  
to Plaintiffs John Allen Lytle and Trudi Lytle, as Trustees of  
the Lytle Trust

02/22/2016 Notice of Entry of Order ▼

Notice of Entry of Order Releasing Cash Bond in the Amount of  
\$123,000.00

## Comment

Notice of Entry of Order Releasing Cash Bond in the Amount  
of \$123,000.00

03/08/2016 Motion ▼

Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of the  
Lytle Trust, Motion for Leave

## Comment

Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of  
the Lytle Trust, Motion for Leave to File First Amended  
Complaint

04/26/2016 Notice ▼

Notice of Non-Opposition to Plaintiff John Allen Lytle and Trudi Lee  
Lytle's, as Trustees of the Ly

## Comment

Notice of Non-Opposition to Plaintiff John Allen Lytle and  
Trudi Lee Lytle's, as Trustees of the Lytle Trust, Motion for  
Leave to File First Amended Complaint

## 05/25/2016 Minute Order ▼

Minute Order

Judicial Officer

Bare, Rob

Hearing Time

3:00 AM

Result

Minute Order - No Hearing Held

## 05/31/2016 Motion for Leave ▼

Judicial Officer

Bare, Rob

Hearing Time

9:00 AM

Cancel Reason

Vacated - per Law Clerk

Comment

Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of the Lytle Trust, Motion for Leave to File First Amended Complaint

## 06/03/2016 Order Granting Motion ▼

Order Granting Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of the Lytle Trust, Mo

Comment

Order Granting Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of the Lytle Trust, Motion for Leave to File First Amended Complaint

## 06/06/2016 Notice of Entry of Order ▼

Notice of Entry of Order Granting Motion for Leave to File First Amended Complaint

Comment

Notice of Entry of Order Granting Motion for Leave to File First Amended Complaint

## 09/14/2016 Motion for Summary Judgment ▼

Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of The Lytle Trust, Motion for Summar

Comment

Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of The Lytle Trust, Motion for Summary Judgment

09/14/2016 Declaration ▼

Declaration of Trudi Lee Lytle in Support of Motion for Summary Judgment

Comment  
Declaration of Trudi Lee Lytle in Support of Motion for Summary Judgment

10/10/2016 Notice of Non Opposition ▼

Notice of Non-Opposition to Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of The Ly

Comment  
Notice of Non-Opposition to Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of The Lytle Trust, Motion for Summary Judgment

11/08/2016 Motion for Summary Judgment ▼

Motion for Summary Judgment

Judicial Officer  
Bare, Rob

Hearing Time  
9:00 AM

Result  
Motion Granted

Comment  
Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of The Lytle Trust, Motion for Summary Judgment

Parties Present ▲

Plaintiff  
Attorney: Haskin Esq, Richard Edward

Plaintiff  
Attorney: Haskin Esq, Richard Edward

Plaintiff  
Attorney: Haskin Esq, Richard Edward

11/15/2016 Order ▼

Order Granting Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of the Lytle Trust, Mo

Comment

Order Granting Plaintiff John Allen Lytle and Trudi Lee Lytle's,  
as Trustees of the Lytle Trust, Motion for Summary Judgment

11/16/2016 Notice of Entry of Order ▼

Notice of Entry of Order Granting Motion for Summary Judgment

Comment

Notice of Entry of Order Granting Motion for Summary  
Judgment

11/30/2016 Memorandum of Costs and Disbursements ▼

Verified Memorandum of Costs

Comment

Verified Memorandum of Costs

01/06/2017 Affidavit in Support ▼

Affidavit of Richard Haskin in Support of Motion for Attorneys' Fees

Comment

Affidavit of Richard Haskin in Support of Motion for Attorneys'  
Fees

01/06/2017 Motion for Attorney Fees ▼

Plaintiff John Allen Lytle and Trudi Lee Lytle, as Trustees of the  
Lytle Trust, Motion for Attorney

Comment

Plaintiff John Allen Lytle and Trudi Lee Lytle, as Trustees of  
the Lytle Trust, Motion for Attorneys' Fees

01/06/2017 Declaration ▼

Declaration of Beau Sterling in Support of Motion for Attorneys'  
Fees

Comment

Declaration of Beau Sterling in Support of Motion for  
Attorneys' Fees

01/06/2017 Request for Judicial Notice ▼

Request for Judicial Notice in Support of Motion for Attorneys' Fees

Comment

Request for Judicial Notice in Support of Motion for Attorneys'  
Fees

01/10/2017 Order to Statistically Close Case ▼

Civil Order To Statistically Close Case

Comment

Civil Order To Statistically Close Case

01/31/2017 Minute Order ▼

Original Type

**Minute Order**

Minute Order

Judicial Officer

Bare, Rob

Hearing Time

**3:00 AM**

Result

**Minute Order - No Hearing Held**

01/31/2017 Notice of Non Opposition ▼

Notice of Non-Opposition to Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of the Ly

Comment

**Notice of Non-Opposition to Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of the Lytle Trust, Motion for Attorneys' Fees**

02/22/2017 Motion ▼

Plaintiff John Allen Lytle and Trudi Lee Lytle's, As Trustees of The Lytle Trust, Motion for Damage

Comment

**Plaintiff John Allen Lytle and Trudi Lee Lytle's, As Trustees of The Lytle Trust, Motion for Damages**

02/22/2017 Affidavit in Support ▼

Affidavit of Richard Haskin in Support of Motion for Damages

Comment

**Affidavit of Richard Haskin in Support of Motion for Damages**

02/22/2017 Declaration ▼

Declaration of Trudi Lee Lytle in Support of Motion for Damages

Comment  
Declaration of Trudi Lee Lytle in Support of Motion for  
Damages

02/23/2017 Minute Order ▼

Minute Order

Judicial Officer  
Bare, Rob

Hearing Time  
11:29 AM

Result  
Minute Order - No Hearing Held

Comment  
Plaintiff John Allen Lytle and Trudi Lee Lytle's, As Trustees of the  
Lytle Trust, Motion for Damages & Plaintiff John Allen Lytle and  
Trudi Lee Lytle, as Trustees of the Lytle Trust, Motion for Attorneys'  
Fees

02/23/2017 Amended Affidavit ▼

Amended Affidavit of Richard Haskin in Support of Motion for  
Damages

Comment  
Amended Affidavit of Richard Haskin in Support of Motion for  
Damages

03/21/2017 Motion for Attorney Fees ▼

Judicial Officer  
Bare, Rob

Hearing Time  
9:30 AM

Result  
Granted

Comment  
Plaintiff John Allen Lytle and Trudi Lee Lytle, as Trustees of the  
Lytle Trust, Motion for Attorneys' Fees

Parties Present ▲  
Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff: Lytle, John Allen

Attorney: Haskin Esq, Richard Edward

Plaintiff: Lytle, Trudi Lee

Attorney: Haskin Esq, Richard Edward

03/21/2017 Motion ▼

Judicial Officer  
Bare, Rob

Hearing Time  
9:30 AM

Result  
Hearing Set

Comment  
Plaintiff John Allen Lytle and Trudi Lee Lytle's, As Trustees of The  
Lytle Trust, Motion for Damages

Parties Present ▲  
Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff: Lytle, John Allen

Attorney: Haskin Esq, Richard Edward

Plaintiff: Lytle, Trudi Lee

Attorney: Haskin Esq, Richard Edward

03/21/2017 All Pending Motions ▼

All Pending Motions

Judicial Officer  
Bare, Rob

Hearing Time  
9:30 AM

Result  
Matter Heard

Parties Present ▲  
Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff: Lytle, John Allen

Attorney: Haskin Esq, Richard Edward

Plaintiff: Lytle, Trudi Lee

Attorney: Haskin Esq, Richard Edward

03/27/2017 Minute Order ▼

Minute Order

Judicial Officer

Bare, Rob

Hearing Time

2:00 PM

Result

Minute Order - No Hearing Held

04/11/2017 Prove Up ▼

Judicial Officer

Bare, Rob

Hearing Time

1:30 PM

Cancel Reason

Vacated

Comment

Prove Up Hearing - Plaintiff John Allen Lytle and Trudi Lee Lytle's,  
As Trustees of The Lytle Trust, Motion for Damages

04/18/2017 Order Granting Motion ▼

Order Granting Plaintiff John Allen Lytle and Trudi Lee Lytle's, as  
Trustees of the Lytle Trust, Mo

Comment

Order Granting Plaintiff John Allen Lytle and Trudi Lee Lytle's,  
as Trustees of the Lytle Trust, Motion for Attorneys' Fees

04/19/2017 Notice of Entry of Order ▼

Notice of Entry of Order Granting Motion for Attorneys' Fees

Comment

Notice of Entry of Order Granting Motion for Attorneys' Fees

04/25/2017 Prove Up ▼

Prove Up

Judicial Officer

Bare, Rob

Hearing Time

1:30 PM

Result  
Matter Heard

Comment  
Court's Prove Up Hearing Re: Testimony to Plaintiff's Damages

Parties Present ▲  
Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff: Lytle, John Allen

Attorney: Haskin Esq, Richard Edward

Plaintiff: Lytle, Trudi Lee

Attorney: Haskin Esq, Richard Edward

05/15/2017 Order Granting ▼

Order Granting - ORDG

Comment  
Order Granting Plaintiff John Allen Lytle and Trudi Lee Lytle's,  
as Trustees of the Lytle Trust, Punitive Damages After  
Hearing

05/15/2017 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ

Comment  
Notice of Entry of Order Granting Punitive Damages After  
Hearing

07/25/2017 Abstract of Judgment ▼

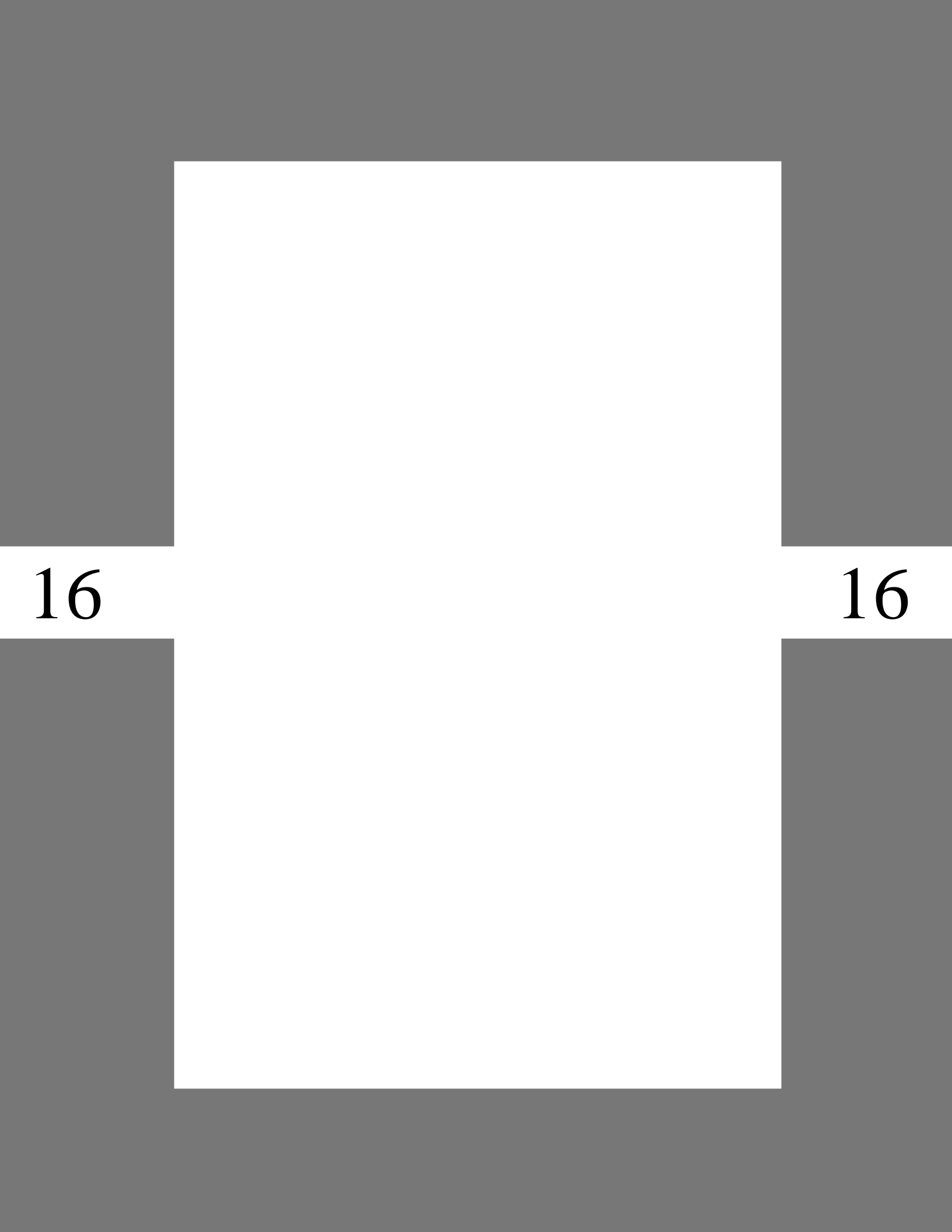
Abstract of Judgment - AOJ

Comment  
Abstract of Judgment

09/29/2017 Ex Parte Motion for Order Allowing Examination of  
Judgment ▼

Ex Parte Motion for Order Allowing Examination of Judgment -  
EXPM

Comment  
Ex Parte Motion for Judgment Debtor's Examination and  
Production of Documents



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**NOTC**  
**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 TO  
CONSOLIDATE CASE NO. A-16-  
747800-C WITH CASE NO. A-17-  
765372-C**

Date: February 21, 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

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 PLEASE TAKE NOTICE that on February 27, 2018, the Court signed the Order  
13 Granting Motion to Consolidate Case No. A-16-747800-C with Case No. A-17-765372-C, a  
14 copy of which is attached hereto.

15 DATED this 5th day of March, 2018.

16 CHRISTENSEN JAMES & MARTIN

17 By: /s/ Laura J. Wolff, Esq.

18 Laura J. Wolff, Esq.

19 Nevada Bar No. 6869

20 7440 W. Sahara Avenue

21 Las Vegas, NV 89117

22 Tel.: (702) 255-1718

23 Fax: (702) 255-0871

24 *Attorneys for September Trust, Zobrist*  
25 *Trust, Sandoval Trust and Gegen*

1  
2  
3 **CERTIFICATE OF SERVICE**

4 I am an employee of Christensen James & Martin. On March 5th, 2018, I caused a  
5 true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER GRANTING  
6 MOTION TO CONSOLIDATE CASE NO. A-16-747800-C WITH CASE NO. A-17-  
7 765372-C, to be served in the following manner:

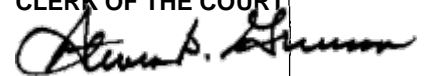
8 ☒ **ELECTRONIC SERVICE**: electronic transmission (E-Service) through the Court's  
9 electronic filing system pursuant to Rule 8.05 of the Rules of Practice for the Eighth  
10 Judicial District Court of the State of Nevada.

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

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

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

16  
17 /s/ Carma Johnson  
18 Carma Johnson  
19  
20  
21  
22  
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24  
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27  
28



1 **ORDR**

2 **CHRISTENSEN JAMES & MARTIN**

3 KEVIN B. CHRISTENSEN, ESQ.

4 Nevada Bar No. 175

5 WESLEY J. SMITH, ESQ.

6 Nevada Bar No. 11871

7 LAURA J. WOLFF, ESQ.

8 Nevada Bar No. 6869

9 7440 W. Sahara Avenue

10 Las Vegas, Nevada 89117

11 Tel.: (702) 255-1718

12 Facsimile: (702) 255-0871

13 Email: kbc@cjmlv.com; wes@cjmlv.com; ljw@cjmlv.com

14 *Attorneys for September Trust, Zobrist Trust, Sandoval Trust*

15 *and Dennis & Julie Gegen*

16 **EIGHTH JUDICIAL DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 MARJORIE B. BOULDEN, TRUSTEE OF  
19 THE MARJORIE B. BOULDEN TRUST,  
20 LINDA LAMOTHE AND JACQUES  
21 LAMOTHE, TRUSTEES OF THE  
22 JACQUES & LINDA LAMOTHE LIVING  
23 TRUST,

24 Plaintiffs,

25 vs.

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

Defendants.

Case No.: A-16-747800-C

Dept. No.: XVIII

**ORDER GRANTING MOTION TO  
CONSOLIDATE CASE NO. A-16-  
747800-C WITH CASE NO. A-17-  
765372-C**

Date: February 21, 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

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,

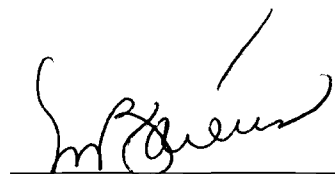
11 Defendants.

12 Presently before the Court is a Motion to Consolidate Case No. A-16-747800-C with  
13 Case No. A-17-765372-C ("Motion"). No Oppositions were filed. The Motion came on for  
14 hearing on February 21, 2018 at 9:00 a.m. in Department XVIII of the Eighth Judicial District  
15 Court, Clark County, Nevada. Wesley J. Smith, Esq. of Christensen James & Martin appeared on  
16 behalf of the Movants, September Trust, dated March 23, 1972 ("September Trust"), Gerry R.  
17 Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family  
18 Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees of  
19 the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust dated May 27, 1992  
20 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint  
21 Tenants ("Dennis & Julie Gegen"). Timothy P. Elson, Esq. of Gibbs Giden Locher Turner Senet  
22 & Wittbrodt LLP appeared on behalf of the Trudi Lee Lytle and John Allen Lytle, as Trustees of  
23 the Lytle Trust ("Lytle Trust"). Daniel T. Foley, Esq. of Foley & Oaks, PC appeared on behalf of  
24 Marjorie B. Boulden, Trustee of the Marjorie B. Boulden Trust, amended and restated dated July  
25 17, 1996 ("Boulden Trust") and Linda Lamothe and Jacques Lamothe, Trustees of the Jacques  
26 and Linda Lamothe Living Trust ("Lamothe Trust"). Christina H. Wang, Esq. of Fidelity  
27 National Law Group appeared on behalf of Robert Z. Disman and Yvonne A. Disman ("Robert  
28 & Yvonne Disman"). The Court having considered the Motion and exhibits, having heard the  
arguments of counsel, for all the reasons contained in the Motion, and with good cause appearing  
therefore, the Court hereby enters the following Order:

1 **IT IS HEREBY ORDERED** that the Motion to Consolidate Case No. A-16-747800-C  
 2 with Case No. A-17-765372-C is hereby GRANTED.

3 **IT IS SO ORDERED.**


4 Dated this 27<sup>th</sup> day of February, 2018.



DISTRICT COURT JUDGE

7 Submitted by:

8 **CHRISTENSEN JAMES & MARTIN**

9   
 Wesley J. Smith, Esq.

10 Nevada Bar No. 11871

11 Laura J. Wolff, Esq.

Nevada Bar No. 6869

7440 W. Sahara Ave.

Las Vegas, NV 89117

Attorneys for Plaintiffs September Trust,


Zobrist Trust, Sandoval Trust, and

Dennis & Julie Gegen

14 **Approved as to Form and Content by:**

15 FIDELITY NATIONAL LAW GROUP

FOLEY & OAK, P.C.

17   
 CHRISTINA H. WANG, ESQ.

Nevada Bar No. 9713

1701 Village Center Circle, Suite 110

Las Vegas, Nevada 89134

Attorneys for Counter-Defendants/Cross-

Claimants Robert & Yvonne Disman

20 GIBBS GIDEN LOCHER TURNER

21 SENET & WITTBRODT LLP

  
 DANIEL T. FOLEY, ESQ.

Nevada Bar No. 1078

626 S. 8<sup>th</sup> Street

Las Vegas, Nevada 89101

Attorneys for Plaintiffs/Counter-  
 Defendants/Cross-Defendants Boulden Trust  
 and Lamothe Trust

22   
 RICHARD E. HASKIN, ESQ.

Nevada Bar No. 11592

23 TIMOTHY P. ELSON, ESQ.

Nevada Bar No. 11559

1140 N. Town Center Drive, Suite 300

Las Vegas, Nevada 89144

Attorneys for Defendants/Counter-

Claimants Lytle Trust

1 **IT IS HEREBY ORDERED** that the Motion to Consolidate Case No. A-16-747800-C  
 2 with Case No. A-17-765372-C is hereby GRANTED.

3 **IT IS SO ORDERED.**

4 Dated this \_\_\_\_ day of February, 2018.

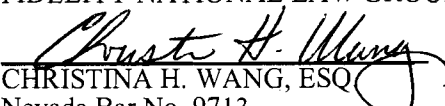
6 \_\_\_\_\_  
 DISTRICT COURT JUDGE

7 Submitted by:  
 8 **CHRISTENSEN JAMES & MARTIN**

9 \_\_\_\_\_  
 Wesley J. Smith, Esq.  
 Nevada Bar No. 11871  
 10 Laura J. Wolff, Esq.  
 Nevada Bar No. 6869  
 11 7440 W. Sahara Ave.  
 Las Vegas, NV 89117  
 12 Attorneys for Plaintiffs September Trust,  
 13 Zobrist Trust, Sandoval Trust, and  
 Dennis & Julie Gegen

14 **Approved as to Form and Content by:**

15 FIDELITY NATIONAL LAW GROUP

16   
 17 CHRISTINA H. WANG, ESQ.  
 Nevada Bar No. 9713  
 18 1701 Village Center Circle, Suite 110  
 Las Vegas, Nevada 89134  
 19 Attorneys for Counter-Defendants/Cross-  
 Claimants Robert & Yvonne Disman

20 GIBBS GIDEN LOCHER TURNER  
 21 SENET & WITTBRODT LLP

22 \_\_\_\_\_  
 RICHARD E. HASKIN, ESQ.  
 Nevada Bar No. 11592  
 23 TIMOTHY P. ELSON, ESQ.  
 Nevada Bar No. 11559  
 24 1140 N. Town Center Drive, Suite 300  
 Las Vegas, Nevada 89144  
 25 Attorneys for Defendants/Counter-  
 26 Claimants Lytle Trust

FOLEY & OAK, P.C.

\_\_\_\_\_ DANIEL T. FOLEY, ESQ.  
 Nevada Bar No. 1078  
 626 S. 8<sup>th</sup> Street  
 Las Vegas, Nevada 89101  
 Attorneys for Plaintiffs/Counter-  
 Defendants/Cross-Defendants Boulden Trust  
 and Lamothe Trust

1           **IT IS HEREBY ORDERED** that the Motion to Consolidate Case No. A-16-747800-C  
 2 with Case No. A-17-765372-C is hereby GRANTED.

3           **IT IS SO ORDERED.**

4           Dated this \_\_\_\_ day of February, 2018.

6           \_\_\_\_\_  
 DISTRICT COURT JUDGE

7 Submitted by:  
 8 **CHRISTENSEN JAMES & MARTIN**

9           \_\_\_\_\_  
 Wesley J. Smith, Esq.  
 10 Nevada Bar No. 11871  
 Laura J. Wolff, Esq.  
 11 Nevada Bar No. 6869  
 7440 W. Sahara Ave.  
 12 Las Vegas, NV 89117  
 Attorneys for Plaintiffs September Trust,  
 13 Zobrist Trust, Sandoval Trust, and  
 Dennis & Julie Gegen

14 **Approved as to Form and Content by:**  
 15 **FIDELITY NATIONAL LAW GROUP**

FOLEY & OAK, P.C.

16           \_\_\_\_\_  
 17 **CHRISTINA H. WANG, ESQ.**  
 Nevada Bar No. 9713  
 18 1701 Village Center Circle, Suite 110  
 Las Vegas, Nevada 89134  
 19 Attorneys for Counter-Defendants/Cross-  
 Claimants Robert & Yvonne Dismar

20           \_\_\_\_\_  
 21 **DANIEL T. FOLEY, ESQ.**  
 Nevada Bar No. 1078  
 626 S. 8<sup>th</sup> Street  
 Las Vegas, Nevada 89101  
 Attorneys for Plaintiffs/Counter-  
 Defendants/Cross-Defendants Boulden Trust  
 and Lamothe Trust

20 **GIBBS GIDEN LOCHER TURNER**  
 21 **SENET & WITTBRODT LLP**

22           \_\_\_\_\_  
 23 **RICHARD E. HASKIN, ESQ.**  
 Nevada Bar No. 11592  
 24 **TIMOTHY P. ELSON, ESQ.**  
 Nevada Bar No. 11559  
 1440 N. Town Center Drive, Suite 300  
 25 Las Vegas, Nevada 89144  
 Attorneys for Defendants/Counter-  
 26 Claimants Lytle Trust

1           **IT IS HEREBY ORDERED** that the Motion to Consolidate Case No. A-16-747800-C  
2 with Case No. A-17-765372-C is hereby GRANTED.

3           **IT IS SO ORDERED.**

4           **Dated this \_\_\_\_ day of February, 2018.**

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DISTRICT COURT JUDGE

Submitted by:  
**CHRISTENSEN JAMES & MARTIN**

Wesley J. Smith, Esq.  
Nevada Bar No. 11871  
Laura J. Wolff, Esq.  
Nevada Bar No. 6869  
7440 W. Sahara Ave.  
Las Vegas, NV 89117  
Attorneys for Plaintiffs September Trust,  
Zobrist Trust, Sandoval Trust, and  
Dennis & Julie Gegen

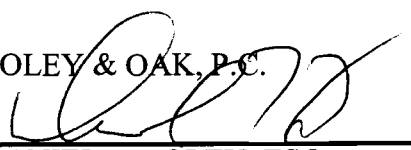
**Approved as to Form and Content by:**  
**FIDELITY NATIONAL LAW GROUP**

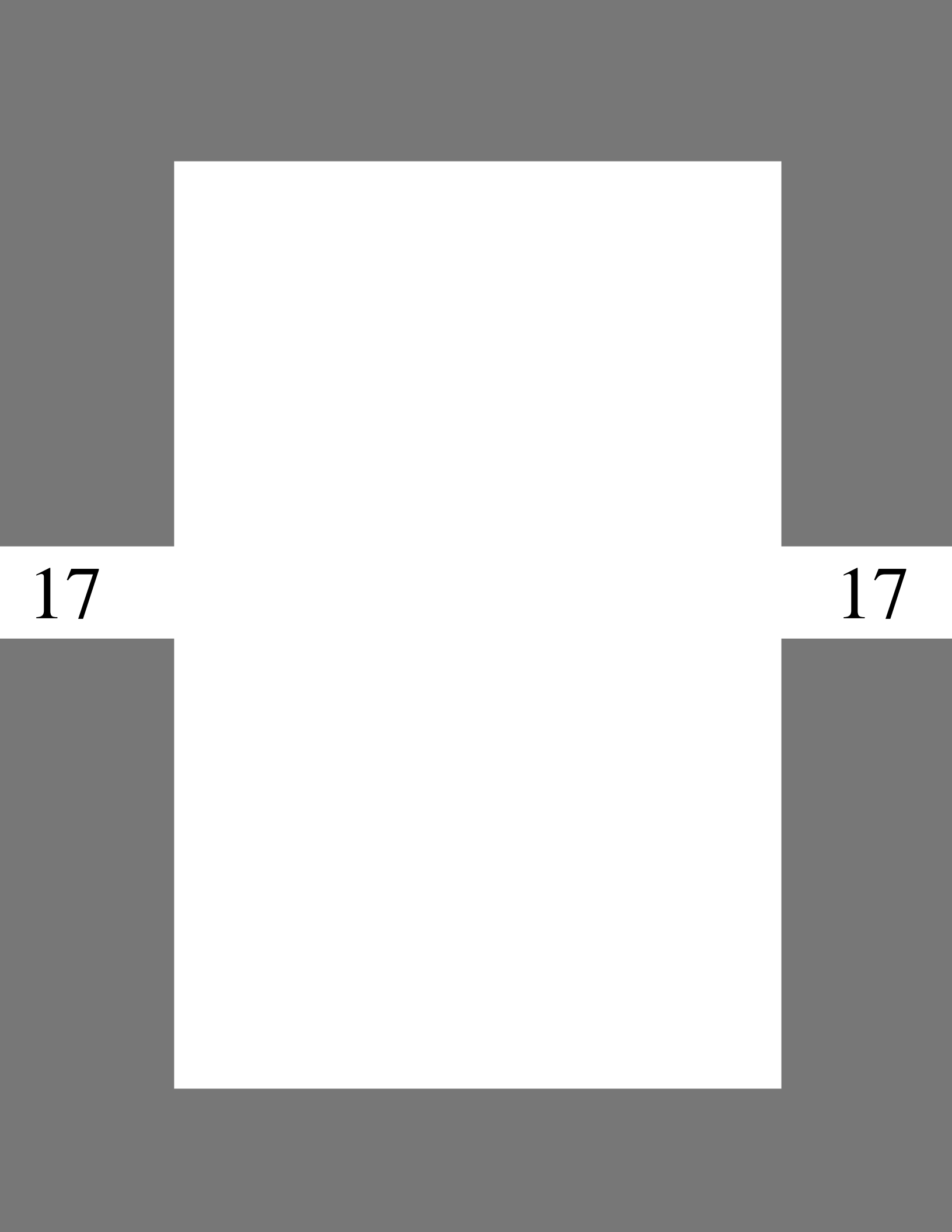
CHRISTINA H. WANG, ESQ.  
Nevada Bar No. 9713  
8363 W. Sunset Road 1701 Village Center  
Circle, Suite 420 110  
Las Vegas, Nevada 89113 89134  
Attorneys for Counter-Defendants/Cross-  
Claimants Robert & Yvonne Disman

**GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP**

**RICHARD E. HASKIN, ESQ.**  
Nevada Bar No. 11592  
**TIMOTHY P. ELSON, ESQ.**  
Nevada Bar No. 11559  
1140 N. Town Center Drive, Suite 300  
Las Vegas, Nevada 89144  
Attorneys for Defendants/Counter-  
Claimants Lytle Trust

FOLEY & OAK, P.C.

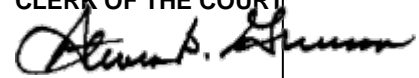
  
DANIEL T. FOLEY, ESQ.  
Nevada Bar No. 1078  
626 S. 8<sup>th</sup> Street  
Las Vegas, Nevada 89101  
Attorneys for Plaintiffs/Counter-  
Defendants/Cross-Defendants Boulden Trust  
and Lamothe Trust



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4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA  
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7  
8 MARJORIE B. BOULDEN TRUST, )

9 Plaintiff(s), )

10 vs. )

11 TRUDI LYTLE, )

12 Defendant(s). )

Case No. A-16-747800-C /  
Case No. A-17-765372-C

DEPT. XVIII

13  
14  
15 BEFORE THE HONORABLE MARK B. BAILUS,  
16 DISTRICT COURT JUDGE

17 WEDNESDAY, MARCH 21, 2018  
18

19  
20 **TRANSCRIPT OF PROCEEDINGS RE:**  
21 **ALL PENDING MOTIONS**

22 APPEARANCES (on page 2).  
23

24 RECORDED BY: ROBIN PAGE, COURT RECORDER  
25

## 1 APPEARANCES:

2 For the Plaintiff(s), September  
3 Trust Dated March 23, 1972;  
4 Gerry R. Zobrist and Jolin G.  
5 Zobrist Family Trust;  
6 Raynaldo G and Evelyn A  
7 Sandoval Joint Living and  
8 Devolution Trust; Julie S.  
9 Gegen, and Dennis A. Gegen: WESLEY J. SMITH, ESQ.

10 For the Plaintiff(s), Linda  
11 Lamothe, Jacques Lamothe,  
12 Marjorie B. Boulden, and  
13 Jacques & Linda Lamothe  
14 Living Trust: DANIEL THOMAS FOLEY, ESQ.

15 For the Counter Defendant(s),  
16 Yvonne A. Disman and  
17 Robert Z. Disman: CHRISTINA H. WANG, ESQ.

18 For the Defendant(s),  
19 Lytle Trust: RICHARD EDWARD HASKIN, ESQ.

1                   **LAS VEGAS NEVADA, WEDNESDAY, MARCH 21, 2018**

2                   [Proceedings commenced at 9:05 a.m.]

3  
4                   THE COURT: On page 8, *Marjorie B. Boulden Trust vs. Trudi*  
5 *Lytle*, Case No. A-16-747800.

6                   MR. HASKIN: Good morning, Your Honor. Richard Haskin on  
7 behalf of the Lytle Trust.

8                   MR. SMITH: Good morning, Your Honor. Wesley Smith on  
9 behalf of the plaintiffs, that's the September Trust, the Zobrist Trust, the  
10 Sandoval Trust, and Dennis and Julie Gegen.

11                  MR. FOLEY: Dan Foley on behalf of Boulden and Lamothe,  
12 Your Honor.

13                  MS. WANG: Christina Wang on behalf of the Dismans, Your  
14 Honor.

15                  THE COURT: And is this all counsel necessary for the  
16 go-forward with this hearing this morning?

17                  MR. HASKIN: Yes, Your Honor.

18                  THE COURT: Counsel, I've had an opportunity to read the  
19 briefing and does any -- does either counsel have a hard copy of the  
20 exhibits that were filed? There was over 200 exhibits.

21                  MR. SMITH: I have some of them, but not all of them.

22                  THE COURT: Well, I -- I pulled up the exhibits, and Exhibit --  
23 Exhibit 5 was -- appears to be the original CC&Rs. And it references the  
24 amended ones as being Exhibit 6, but Exhibit 6 appears to be the same  
25 CC&Rs. Does anybody have a hard copy of the amended CC&Rs?

1 MR. SMITH: I do not have those with me.

2 MR. HASKIN: I may have one, Your Honor. Permission to  
3 take a look real quick.

4 THE COURT: Sure. Or am I just misreading Exhibit 6?

5 MR. HASKIN: Your Honor, my -- my exhibits, I believe, were  
6 letters. So I think you're referring to --

7 MR. SMITH: Yeah, that's -- it is my exhibit. I'm sorry, I do not  
8 have it with me today.

9 THE COURT: Okay. Well --

10 MR. HASKIN: I do have a copy, Your Honor, within my  
11 pleading, the opposition and counter motion.

12 THE COURT: Well, I was going to review them before court  
13 today. I haven't had a chance. If they're part of your exhibits, I'll look --  
14 I'll look through your exhibits.

15 In any event, this is on for Plaintiff's Motion for Summary  
16 Judgment, or in the alternative, Motion for Judgment on the Pleadings.  
17 Defendant Trudi Lytle, John Allen Lytle, the Lytle Trust opposition to  
18 Motion for Summary Judgment or in the alternative, Motion for Judgment  
19 on the Pleadings and Counter Motion for Summary Judgment.

20 I have read all the briefing. Did a little bit of independent  
21 research. I noticed the -- I believed then the opposition was -- the  
22 parties cited *Boulder Oaks Community Association vs. B&J Andrews*  
23 *Enterprises*, I actually litigated that case and prevailed on Summary  
24 Judgment, even though the supreme court said I didn't have a likelihood  
25 of success on the merits in dissolving the preliminary injunction. So

1 sometimes the supreme court gets it wrong.

2 In any event, I do have a little bit of a working knowledge of  
3 NRS 116. Does counsel want to be heard on oral argument in this  
4 matter?

5 MR. SMITH: Sure, Your Honor, if you want to entertain it.

6 MR. HASKIN: Yes, Your Honor. And permission to approach,  
7 Your Honor, I --

8 THE COURT: Sure. And thank you.

9 MR. HASKIN: Your Honor, for the record, I handed you  
10 Exhibit C from our opposition and counter motion, which is the amended  
11 CC&Rs.

12 THE COURT: Thank you, counsel.

13 MR. HASKIN: You're welcome, Your Honor.

14 THE COURT: Counsel, Plaintiff?

15 MR. SMITH: Thank you, Your Honor.

16 I think that probably the best place to start is to kind of  
17 summarize why we're here today. My clients are property owners within  
18 the Rosemere subdivision, four different lots that they own. And the  
19 Lytles have recorded a -- an abstractive judgment or multiple abstracts  
20 of judgment on their properties.

21 Now, the facts are undisputed today. We don't have any  
22 material facts that are in dispute. It's undisputed that my clients were  
23 not defendants in the underlying litigation, they were not parties to the  
24 underlying litigation, and they are not judgment debtors. So the Lytles  
25 have taken those judgments and recorded them against properties that

1 are -- do not belong to the judgment debtor.

2 And so really, this comes back to the underlying litigation.  
3 Because there are important findings of fact and conclusions of law from  
4 that case that arise from the judgment they recorded that preclude them  
5 from doing what they've done. Specifically, Judge Leavitt in that prior  
6 case found that those amended CC&Rs were void *ab initio*. Not  
7 rescinded, not voidable, not divisible, but void *ab initio*, meaning from the  
8 very beginning, meaning they can never be enforced, they never came  
9 into existence.

10 So the other thing that she found is that this particular  
11 association, this judgment debtor, was not an NRS 116 association as  
12 it's defined under that statute. Instead, it's a very particular type of  
13 association called a limited purpose association, which is governed  
14 exclusively by NRS 116.1201. Now, they are relying upon a particular  
15 section of 116 called 3117 to say that they can record these judgments  
16 against the individual units within the association.

17 Now, 3117 on its very face says that it can record a judgment  
18 against an association. Now, association is a defined term under  
19 NRS 116, and Judge Leavitt specifically found that this association did  
20 not qualify under that definition. So on its face, 3117 can't be applied.

21 Further, NRS 1201 -- or 116.1201 says that Chapter 116 is  
22 only applicable to a limited purpose association for the specifically  
23 enumerated subsections; there's 28 of them. NRS 311 -- 116.3117 is  
24 not one of those sections.

25 And so we have right on its face, clear and unambiguous in

1 two different places, that they don't have authority to do what they've  
2 done. Yet that's what they're asking you to do. They say that there's  
3 equity that should be applied here. But they haven't given you a single  
4 rule of equity that's applicable here to do what they want you to do.

5 We're simply asking to be put on the same position as the  
6 other plaintiffs in this case. We are recently consolidated. Judge  
7 Williams has already considered this issue.

8 THE COURT: Just out of curiosity, Judge Williams recused  
9 himself?

10 MR. SMITH: He did, Your Honor.

11 THE COURT: After issuing the order?

12 MR. SMITH: Yes, Your Honor.

13 THE COURT: Okay. So that's how it ended up in my  
14 department?

15 MR. SMITH: That's how it ended up with you, Your Honor.

16 MR. FOLEY: My daughter took a job as his law clerk,  
17 unfortunately. So.

18 THE COURT: Oh. Okay.

19 MR. SMITH: He screwed it up for us.

20 MR. HASKIN: Your Honor, just to add to that real quick, they  
21 filed a separate action before Judge Israel. We had an action already  
22 pending before Judge Williams. The actions -- they filed a Motion to  
23 Consolidate almost identical time as Judge Williams recused himself.  
24 So we -- the Judge Williams case was transferred to your court, the  
25 Motion for -- for Consolidation was granted, and the Judge Israel case,

1 which is this case, was then moved over to this court as well.

2 MR. SMITH: That's all correct, Your Honor.

3 THE COURT: I just was curious, because I saw my name  
4 mentioned in the pleadings. And I -- and I'm just wondering how I ended  
5 up with the -- with the case.

6 MR. SMITH: That's right.

7 THE COURT: So that --

8 MR. HASKIN: You're lucky.

9 MR. SMITH: So that's where we are. And Judge Williams, he  
10 already considered these exact same issues. It's the exact same legal  
11 question. We have a single legal question before you today. Was it  
12 appropriate under NRS 116 or under the original CC&Rs, which are the  
13 only ones that are applicable today, was it appropriate to record these  
14 judgments against the individual units.

15 And judge Williams found that it was not, that 116 didn't apply,  
16 that this was a limited purposes association, and that 3117, specifically  
17 that section, was not applicable.

18 And so he ordered that those judgment liens be expunged.  
19 We're just asking this court to put us in the same position as the other  
20 property owners in this case. Now, that order is on appeal. And so the  
21 Lytles are going to have their day to be able to explain that the supreme  
22 court, why they think that was wrong.

23 THE COURT: What is the status of the appeal?

24 MR. SMITH: It's currently under briefing, as far as I know.

25 THE COURT: I saw that you'd attached the opening brief.

1 Has an answering brief been filed?

2 MR. SMITH: Yes, Your Honor. Mr. Foley filed an answering  
3 brief. I believe that the other counsel in the case filed an answering  
4 brief. We filed an Amicus brief earlier this week. We expect that no  
5 matter what happens here today, there's going to be an appeal, and that  
6 those appeals will be consolidated and that the supreme court's going to  
7 hear all of the issues at the same time.

8 So, you know, that's really the -- the gist of it. It seems pretty  
9 straightforward to me. You know, normally on a summary judgment  
10 you've got a lot of argument about facts are in dispute, those kinds of  
11 things. This is really straightforward and it's really an easy case. You  
12 know, law of the case is applicable. We've got res judicata issues that  
13 are applicable from the prior -- the underlying case that arise from this  
14 judgment. And so we submit that to you and -- and ask that you grant  
15 our Motion for Summary Judgment today.

16 THE COURT: Thank you, counsel.

17 Counsel, you just handed me the amended and restated  
18 Declaration of Covenants, Conditions, and Restrictions for Rosemere  
19 Estates. I had an opportunity to glance through it. I was looking at the  
20 *Boulder Oaks* decision. And the preface to it regarding NRS  
21 Chapter 116 states:

22 While NRS Chapter 116 generally applies to all Nevada  
23 common interest communities, it only applies to communities  
24 containing lots reserved exclusively for nonresidential use, if the  
25 declaration so provides.

1 And the Rosemere Estates is exclusively residential?

2 MR. HASKIN: Yes, Your Honor.

3 THE COURT: Okay. Six --

4 MR. HASKIN: Nine residential homes.

5 THE COURT: Nine residential homes; is that correct?

6 MR. HASKIN: There's actually eight homes within the  
7 community. And there's an empty lot, which is the Lytles' lot within the  
8 community all -- as well. But the -- even the original CC&Rs, Your  
9 Honor, designated each of those nine lots to be for residential purposes.

10 THE COURT: But it's strictly a residential --

11 MR. HASKIN: Correct.

12 THE COURT: There's no nonresidential units in it?

13 MR. HASKIN: Correct.

14 THE COURT: Thank you.

15 MR. HASKIN: Your Honor, and -- and just to give you a  
16 picture of the community, Your Honor, it's essentially a single-street  
17 cul-de-sac, where you enter kind of through the middle of the cul-de-sac  
18 and you have homes on the left and homes on the right. But it's -- it's  
19 nine units, it's very small.

20 Your Honor, I think that both parties have extensively and well  
21 briefed this matter, and I think that the law is well referred to therein. So  
22 I'll only draw your attention, Your Honor, really, the overlying themes of  
23 the Lytles' position. I think we have two essential questions in this case.  
24 And the first being does Nevada law provide creditors with the right to  
25 lien units within an association? I think -- I think that's the broad-based

1 question. And we've heard a lot of reference from the plaintiffs to the  
2 fact that they weren't judgment debtors. That they -- they weren't parties  
3 to the underlying case, they weren't judgment debtors to the underlying  
4 case. And somehow that's supposed to absolve them from any potential  
5 liability.

6 Well, that's true personally, meaning that there is no possible  
7 way under Nevada law that I as a creditor could seek to enforce a  
8 judgment against all of their assets, it's not true with respect to the units  
9 that are contained within the association.

10 In fact, regardless of whether NRS 116.3117 applies, and we  
11 believe it does, but let's just take it in the abstract for a second. 3117  
12 undoubtedly provides a right for a judgment creditor to obtain a judgment  
13 against a unit within an association. And, Your Honor, in our reply brief  
14 we cited the Uniform Common Interest Ownership Act, and it provides  
15 reasoning as to why that law exists. In fact, the UCIOA has provided  
16 that relief for years now prior to when Nevada adopted its own version of  
17 the UCIOA some time ago.

18 But there is a right under Nevada law unquestionably that  
19 provides a creditor with a right to place a lien against a unit within an  
20 association. And the reasoning again is within the UCIOA it states that  
21 a -- a creditor should be able to reach the equity of the judgment debtor.  
22 Unquestionably, units in common interest developments. And that's  
23 what we're talking about here, whether it's a limited purpose association,  
24 a condominium complex, an RV park, whatever you have, it's a common  
25 interest development.

1 In this case, we have a limited purpose association. Since  
2 July 29, 2013, we have a limited purpose association. But since that  
3 time it's an LPA. And a judgment creditor has the right, whether it's an  
4 LPA or otherwise, to collect against a unit within the association. Why?  
5 Because a unit is part of the association. In fact, it's included within the  
6 definitions under Chapter 116. Just look to the definitions, don't even  
7 get past those.

8 NRS 116.021 defines a common interest community as  
9 including all of the real estate within the community, common elements,  
10 limited common elements, it also includes the units.

11 THE COURT: I will tell you, counsel, their -- their main  
12 argument is that -- I was curious why -- how -- why Judge Williams no  
13 longer had the case, because wouldn't this case -- wouldn't this motion  
14 be before Judge Williams if he hadn't recused himself?

15 MR. HASKIN: Your Honor, I believe so.

16 THE COURT: Opposing counsel's nodding up and down as if  
17 to indicate yes.

18 MR. HASKIN: Well, Your Honor, it's --

19 THE COURT: And here's my concern, counsel. Just Judge  
20 Williams' order is not binding on me.

21 MR. HASKIN: No.

22 THE COURT: Obviously, another district court's ruling is not  
23 binding. There was a lot of briefing on the issue of preclusion, res  
24 judicata, law of the case. I don't think it's law of the case, it hasn't gone  
25 up to the Supreme Court and then been decided. I don't believe it's res

1    judicata. Your issue preclusion argument was sound, however, I'm not  
2    sure I would even decide on issue preclusion.

3            You invited me to review the underlying briefing as to Judge  
4    Williams' order, which I do intend to do. But my -- my question to you,  
5    counsel, is there any reason for you to believe that if this -- if this motion  
6    has been in front of Judge Williams, would he have decided any  
7    differently than he decided the -- the other order, the other matter that's  
8    in this order? And, you know, candor to the court is always good when  
9    you're making an argument. But is there any reason to believe that this  
10   matter had been in front of Judge Williams, you would have been able to  
11   persuade him differently than this previous order that is now up on  
12   appeal?

13           MR. HASKIN: Your Honor, I believe so. And there is a  
14   distinction. When Judge Williams heard this case, he heard the case  
15   only with the -- and I'll refer to it as *NRED 1*, I think that's how we  
16   referred to it in our briefings.

17           THE COURT: It took me a while to get the fact pattern down  
18   on what occurred in each -- in each proceeding.

19           MR. HASKIN: Yeah, I forget that I've --

20           THE COURT: But I think I have it down now.

21           MR. HASKIN: -- lived it my whole -- you know, basically, my  
22   whole adult career it seems like. But the -- *NRED 1* essentially was the  
23   litigation to seek the -- the voiding of the amended CC&Rs. *NRED 2*  
24   was a different litigation entirely. That was not subject o Judge Williams'  
25   order, and there are distinctions to be made. And I think important ones.

1           The *NRED 2* case, the parties, all the parties involved,  
2 including the association, stipulated to the fact that the amended CC&Rs  
3 were the governing document and were the law of the land.

4           THE COURT: But wasn't that only -- wasn't that stipulation  
5 only applicable to *NRED 2*? I mean, wasn't it limited to just application  
6 to *NRED 2*?

7           MR. HASKIN: Correct. It was -- it was limited in application to  
8 *NRED 2*. It was, Your Honor. But --

9           THE COURT: So it's not binding in any other form? That's --  
10 the stipulation is not binding in any other form?

11           MR. HASKIN: No, but I -- Your Honor, I think the distinction's  
12 important. Because one of our key arguments, and perhaps our key  
13 argument in this case, is that you can't ignore the legal -- the legal  
14 realities of the fact that until July 29th, 2013, and really with respect to  
15 *NRED 2*, until well after that, till 2016, the amended CC&Rs were the  
16 governing documents. They -- they were the governing documents.

17           THE COURT: But their argument is they were not a party to  
18 *NRED 2*, that the stipulation was between the association and the Lytles,  
19 and it was only limited to *NRED 2*.

20           MR. HASKIN: Sure, Your Honor. But the association -- this  
21 is -- this is not an ordinary corporation, right. This is not a corporation  
22 that had shareholders. An association is not an entrepreneurial  
23 ventureship. An association -- a homeowners association, is an  
24 organizational structure that consists of all the homeowners who've  
25 worked -- who vote to have a board to run the governance of their

1 community. This association is the homeowners. That's what it is.

2 When we join associations, we join voluntarily knowing that  
3 the board controls us. In one way or another, the board controls us.  
4 And when the board enters that stipulation for *NRED 2*, that's the  
5 decision that binds the association. Whether we as an association like it  
6 or not, and whether they liked it or not as debtors, and let's not forget  
7 that some of the board members are plaintiffs in this case. They  
8 decided this. This was their issue. They fought this case. They're not  
9 bystanders to this.

10 And even if they were bystanders, it wouldn't matter. The  
11 homeowners association is not a corporation in its ordinary terms. It is  
12 an organizational structure to which we as homeowners are all subject to  
13 what the board of directors decides. And in this case, what they decided  
14 to do was they decided to try to foreclose against the Lytles' home by  
15 enforcing Chapter 116's foreclosure provision and the amended CC&Rs'  
16 foreclosure provisions; that was their decision. They tried to enforce it,  
17 and the Lytles defended themselves against a foreclosure in *NRED 2*.  
18 And in order to do that, they were forced to stipulate that the amended  
19 CC&Rs were the governing documents, because their defenses in that  
20 case against the foreclosure wasn't that the amended CC&Rs were void  
21 *ab initio*. That was never an issue in *NRED 2*.

22 What they said was, You didn't even follow your own  
23 amended CC&Rs or Chapter 116. And we're going to agree that's the  
24 law of the land. So what ended up happening was the Lytles prevailed  
25 in that case.

1 And what the plaintiffs are seeking here really produces an  
2 absurd result, which is that had the prevailing party been the plaintiffs in  
3 this case, they would have foreclosed on the Lytles' house or lot. They  
4 wouldn't have anything. But because the Lytles prevailed, they have no  
5 remedy to obtain their attorneys' fees. Because now, they're arguing,  
6 well, sorry, the amended CC&Rs are void *ab initio*.

7 The -- the key to this case, really, is just that, is if a document  
8 is declared void *ab initio*, should it penalize the party that had it declared  
9 void *ab initio*? And the *Mackintosh* case, Your Honor, which we cite,  
10 and other cases that are similar, state the otherwise. It states that just  
11 because you have a document declared void *ab initio*, you shouldn't be  
12 punished as a result of that.

13 And -- and this is not the *Bergstrom* case, where a party  
14 obtained damages and also rescission. This is -- this is different. This is  
15 the *Mackintosh* case, where the court said, your document is -- the  
16 document's void *ab initio*. We're going to grant you that relief. And we  
17 know you've incurred attorneys' fees as a result of that, and the contract  
18 provided an award of attorneys' fees. And so we're going to allow you to  
19 enforce that contractual provision.

20 In this case, the amended CC&Rs, Section 10.2, provides the  
21 exact same relief as NRS 116.3117. It states that if a judgment is  
22 obtained against the association, it is a judgment against each and every  
23 one of the units in this association pro rata. That's what we're seeking to  
24 enforce. Because the contrary is -- it's -- not only is it not equitable, but  
25 it's absurd. Because only the association could have prevailed in those

1 cases under their theory of the case. And their theory of the case is that  
2 we're judgment debtors, we -- we're not judgment debtors, because we  
3 weren't parties to that case.

4 Well, the wealth of common interest development law says  
5 otherwise. Says if you join a common interest development, this is not  
6 you becoming a shareholder of a corporation. This is you joining an  
7 organizational structure and you have knowledge of these amended  
8 CC&Rs, why? They're recorded against your property and we provided  
9 you copies of them. You have knowledge of 116, you're assumed to  
10 have knowledge of 116, because you lived within the common interest  
11 development.

12 And that's the thrust of our argument, Your Honor.

13 THE COURT: Okay. Counsel, you invited me to review the  
14 underlying briefing in Judge Williams' order. I am going to take you up  
15 on your invitation. I haven't had a chance to do that yet. I have pulled  
16 the order and some of the briefing. Is there anything in rebuttal that you  
17 want to argue to the court? I am going to take this case under  
18 submission. I want to -- took me a while to get the fact pattern down,  
19 quite frankly. I had to review it over a couple of times. There's multiple  
20 litigations that underline this. I was going to put it on for two weeks for  
21 my decision.

22 But I don't want -- I want you to make whatever argument you  
23 want to make in response to counsel's argument.

24 MR. SMITH: Thank you, Your Honor. I appreciate that.

25 I think that I'll start with the distinction that's being made

1 between the *NRED 1* and the *NRED 2* litigation. Yes, there was a  
2 stipulation that was entered at one time in that case. But I'll actually  
3 refer to Exhibit L from the defendant's exhibits.

4 This is an order that they obtained in summary judgment. It  
5 was entered on November 15th, 2016, in case A-10-631355-C. It's  
6 called The Order Granting plaintiff John Alvin Lytle and Trudi Lee Lytles  
7 as Trustees of Lytle Trust, Motion for Summary Judgment.

8 THE COURT: Is this the order that mentions that it was void  
9 *ab initio* six times?

10 MR. SMITH: Yeah.

11 THE COURT: Okay.

12 MR. SMITH: Exactly.

13 THE COURT: I've reviewed it.

14 MR. SMITH: It seems kind of disingenuous to say that we  
15 stipulated to this issue and this was the main issue and that void *ab initio*  
16 never came up.

17 THE COURT: And your argument also was this was prepared  
18 by the Lytles' counsel --

19 MR. SMITH: Absolutely.

20 THE COURT: -- as with many of the other orders that  
21 basically the association did not put up a fight and it was akin to a  
22 default judgment.

23 MR. SMITH: Yeah. And, you know, whether or not it's a  
24 default judgment, you know, really aside from that, the whole point is  
25 that the Lytles, throughout all of the litigation that they've gone through,

1 they have argued that this is void *ab initio*. Now, void *ab initio* is a legal  
2 term with --

3 THE COURT: Means it never existed.

4 MR. SMITH: -- specific meaning. And to argue for that and  
5 successfully win at every turn they've won, and the final judgment, that's  
6 what they've gotten. And to turn around and now say that they can use  
7 that against nonparties is just -- it -- it doesn't make any sense. It's not  
8 legally possible. And so we -- we would say that's just not okay.

9 But as far as the -- you know, you asked whether or not Judge  
10 Williams would make the same decision today, I wasn't there. But I did  
11 read the transcript yesterday of the hearing. And it was pretty  
12 one-sided. And I would say that he would not have changed his mind.  
13 He was decidedly against the defendant's position on this issue.

14 And so we can submit that for -- for your review, as well, as  
15 part of that.

16 THE COURT: I'm going to go back and read the Mackintosh  
17 case, also, while I take this under submission. Probably do some  
18 independent research. And I am going to review the underlying basis of  
19 Judge Williams' order. If you want to submit transcripts, that's fine.

20 MR. SMITH: Okay. And one -- one other thing. If you're  
21 going to review *Mackintosh*, I would just say you should also read the  
22 Ninth Circuit's opinion in *Golden Pisces* --

23 THE COURT: I'll probably --

24 MR. SMITH: -- which we cited in our briefs.

25 THE COURT: -- do more than that, counsel. I'll probably

1 review all --

2 MR. SMITH: Thank you, Your Honor.

3 THE COURT: -- a lot of the cases cited. Like I said, it took  
4 me a while in reading this to get a handle on the fact that there was -- it  
5 was a lengthy fact pattern and tried to understand what occurred in each  
6 of t he -- it was, what, three -- *NRED 1*, *NRED 2*, *NRED 3*, then what  
7 happened in front of Judge Leavitt, and then what happened in front of  
8 Judge Williams. And now it's happening in front of myself.

9 MR. HASKIN: You got sucked in.

10 MR. SMITH: We won't belabor the issue then. We'll let you  
11 get to it.

12 THE COURT: Thank you, counsel.

13 MR. SMITH: Thank you.

14 MR. HASKIN: Thank you.

15 [Proceedings concluded at 9:31 a.m.]

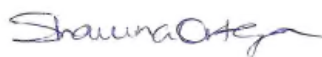
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19 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
20 audio/video proceedings in the above-entitled case to the best of my  
ability.

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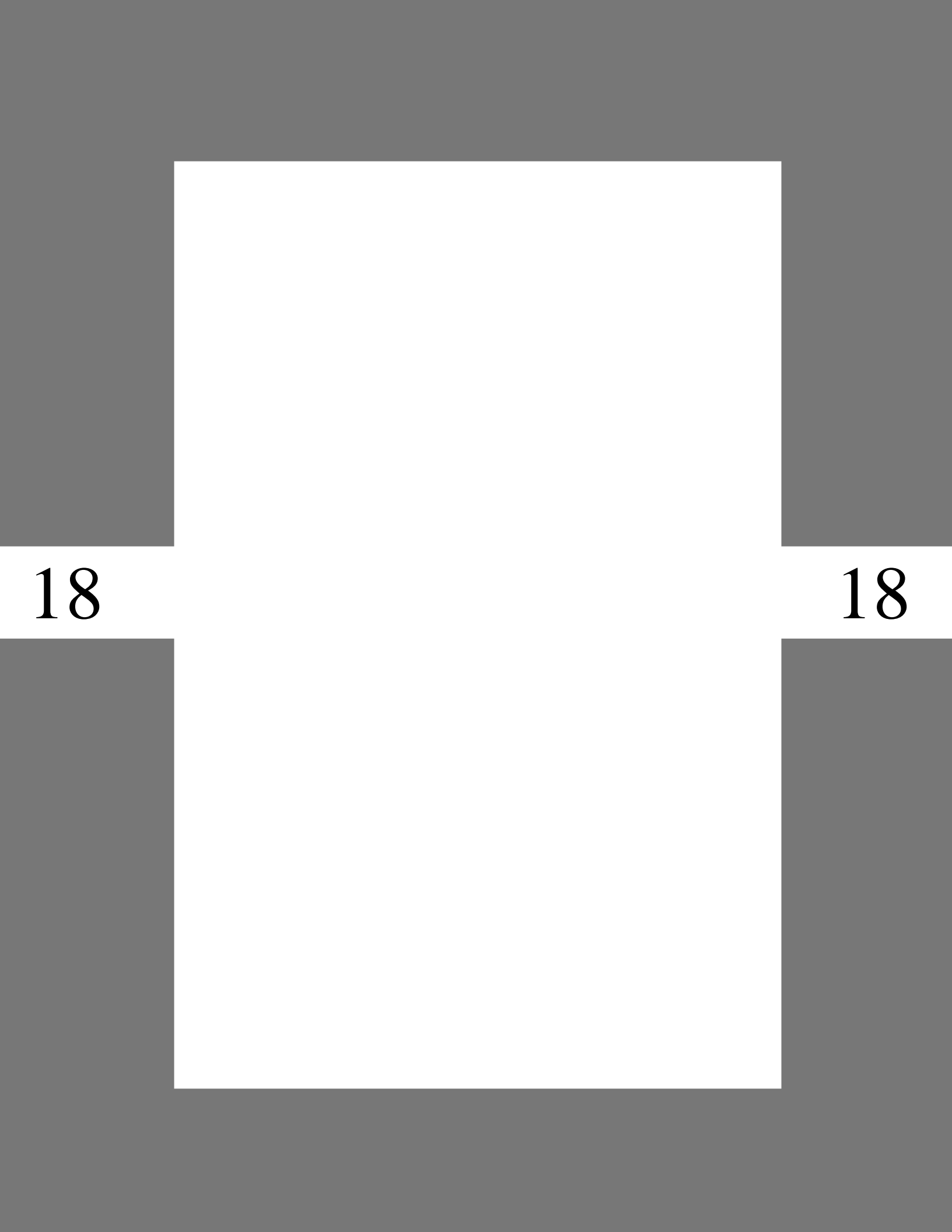
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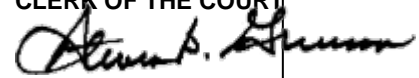
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1 RTRAN



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4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA  
6

7  
8 MARJORIE B. BOULDEN TRUST, )

9 Plaintiff(s), )

10 vs. )

11 TRUDI LYTLE, )

12 Defendant(s). )

Case No. A-16-747800-C /

Case No. A-17-765372-C

DEPT. XVIII

13  
14  
15 BEFORE THE HONORABLE MARK B. BAILUS,  
16 DISTRICT COURT JUDGE

17 WEDNESDAY, MAY 2, 2018

18  
19 **TRANSCRIPT OF PROCEEDINGS RE:**  
20 **DECISION**

21  
22 APPEARANCES (on page 2).

23  
24 RECORDED BY: ROBIN PAGE, COURT RECORDER  
25

## 1 APPEARANCES:

2 For the Plaintiff(s), September  
3 Trust Dated March 23, 1972;  
4 Gerry R. Zobrist and Jolin G.  
5 Zobrist Family Trust;  
6 Raynaldo G and Evelyn A  
7 Sandoval Joint Living and  
8 Devolution Trust; Julie S.  
9 Gegen, and Dennis A. Gegen: WESLEY J. SMITH, ESQ.

10 For the Plaintiff(s), Linda  
11 Lamothe, Jacques Lamothe,  
12 Marjorie B. Boulden, and  
13 Jacques & Linda Lamothe  
14 Living Trust: DANIEL THOMAS FOLEY, ESQ.

15 For the Counter Defendant(s),  
16 Yvonne A. Disman and  
17 Robert Z. Disman: CHRISTINA H. WANG, ESQ.

18 For the Defendant(s),  
19 Lytle Trust: RICHARD EDWARD HASKIN, ESQ.

1 **LAS VEGAS NEVADA, WEDNESDAY, MAY 2, 2018**

2 [Proceedings commenced at 9:19 a.m.]

3  
4 THE COURT: On page 6, *September Trust et al, vs. Trudi*  
5 *Lee Lytle and John Allen Lytle*, trustees of the Lytle Trust, Case No.  
6 A-17-765372.

7 Counsel, state your appearances, please.

8 MR. SMITH: Good morning, Your Honor. Wesley Smith for  
9 the September Trust, the Zobrist Trust, the Sandoval Trust, and Dennis  
10 and Julie Gegen.

11 THE COURT: Thank you, counsel.

12 MR. FOLEY: Dan Foley on behalf of the Boulden and  
13 Lamothe Trusts.

14 MR. HASKIN: Good morning, Your Honor. Richard Haskin on  
15 behalf of the Lytle Trust.

16 MS. WANG: Good morning, Your Honor. Christina Wang on  
17 behalf of the defendants, counter claimants, the Dismans.

18 THE COURT: Thank you, counsel.

19 This is -- this is Plaintiff's Motion for Summary Judgment, or in  
20 the alternative, Motion for Judgment on Pleadings, and Defendant Trudi  
21 Lytle, John Lytle, the Lytle Trust counter motion for Summary Judgment;  
22 is that correct?

23 MR. HASKIN: Yes, Your Honor.

24 THE COURT: And we've heard argument in this case; is that  
25 correct?

1 MR. SMITH: Yes, Your Honor.

2 MR. HASKIN: Yes.

3 THE COURT: I've reviewed all the briefing. And in light of the  
4 argument, I am -- will grant the plaintiff's Motion for Summary Judgment,  
5 deny the defendant's Counter Motion for Summary Judgment.

6 In review -- I also pulled -- so the parties are clear, I also  
7 pulled Judge Williams' previous order in this matter, which addressed a  
8 lot of the issues raised in this matter. And I feel that -- that this order, I'm  
9 going to adopt the findings of facts and conclusions of law set forth in  
10 this order as they may pertain to this case. And my order is going to  
11 be -- as Judge Williams' order addresses additional facts and he -- and  
12 he did not -- he did not take any findings that the defendant's  
13 [indiscernible] title Plaintiff's property at issue was left to the trier of fact.  
14 And his order is -- dealt with issues not raised in -- in this case.

15 So the order in this case is that the court denies the Lytles'  
16 Counter Motion for Summary Judgment, grant Plaintiff's Motion for  
17 Summary Judgment, or in the alternative, Motion for Judgment on the  
18 Pleadings, expunging and striking the abstract of judgment recorded  
19 against the plaintiff's properties, restraining enjoining Lytles from selling  
20 or attempting to sell the plaintiff's properties, and from taking any action  
21 in the future against the plaintiffs or the properties based upon any  
22 litigation the Lytles have commenced against the association.

23 In addition to the findings of facts and -- I found that Judge  
24 Williams' order was the law of the case. And because these cases -- so  
25 that's an additional finding you're going to have to make, counsel. But if

1 you base your findings of fact and conclusions of law is relevant to this  
2 case on Judge Williams' case, I wanted to keep them consistent. That's  
3 why I'm addressing this at this time.

4 So counsel, as the prevailing party, I'm going to have you  
5 prepare the order, including the denial of the counter motion. And then  
6 submit it to opposing counsel as to approval as to content and form.  
7 And then please try to submit it to my chambers within 10 days as  
8 required by -- under our local rules.

9 So is counsel understanding my order?

10 MR. SMITH: Yes, Your Honor.

11 MR. HASKIN: Yes, Your Honor.

12 THE COURT: Making it consistent with Judge Williams.

13 MR. HASKIN: Yes, Your Honor.

14 THE COURT: And -- but there was some things that Judge  
15 Williams addressed, especially as to what he ordered that wasn't  
16 requested in the Motion for Summary Judgment. So my orders are  
17 consistent with what you have requested in your Summary Judgment.  
18 There was a lot of additional orders that I'm not adopting. Because they  
19 weren't addressed in your motion. Okay.

20 Thank you, counsel.

21 ///

22 ///

23 ///

1 MR. HASKIN: Thank you, Your Honor.

2 MR. FOLEY: Thank you, Your Honor.

3 MR. SMITH: Thank you, Your Honor.

4 [Proceedings concluded at 9:24 a.m.]

5 ///

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7 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
8 audio/video proceedings in the above-entitled case to the best of my  
9 ability.

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Shawna Ortega, CET\*562

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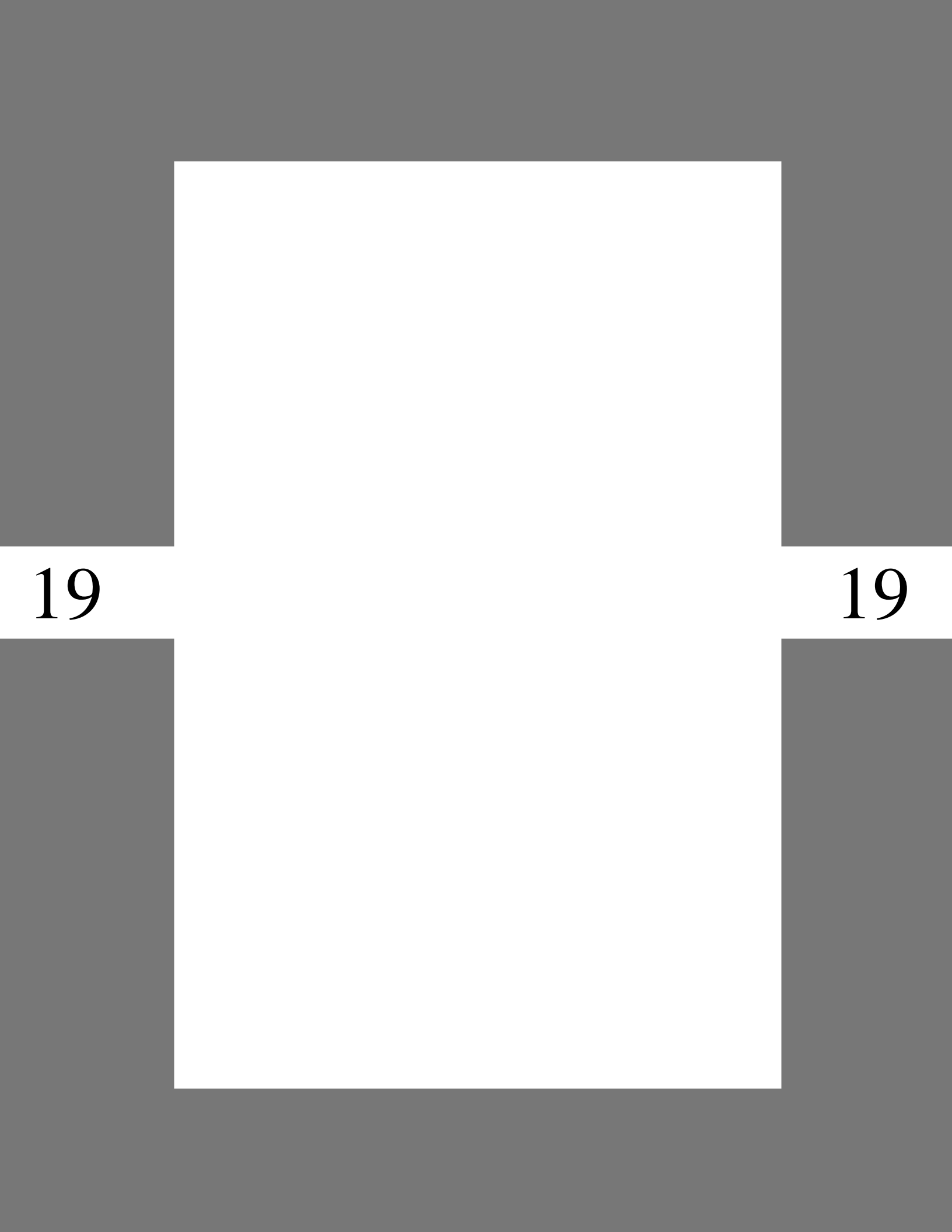
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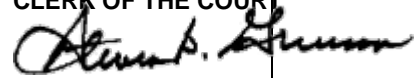
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1 **NEOJ**  
2 **CHRISTENSEN JAMES & MARTIN**  
3 KEVIN B. CHRISTENSEN, ESQ.  
Nevada Bar No. 175  
4 WESLEY J. SMITH, ESQ.  
Nevada Bar No. 11871  
5 LAURA J. WOLFF, ESQ.  
Nevada Bar No. 6869  
6 7440 W. Sahara Avenue  
Las Vegas, Nevada 89117  
7 Tel.: (702) 255-1718  
Facsimile: (702) 255-0871  
8 Email: kbc@cjmlv.com; wes@cjmlv.com; ljw@cjmlv.com  
*Attorneys for September Trust, Zobrist Trust, Sandoval Trust*  
9 *and Dennis & Julie Gegen*

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

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

15 Plaintiffs,

16 vs.

17 TRUDI LEE LYTLE, JOHN ALLEN  
18 LYTLE, THE LYTLE TRUST, DOES I  
through X, and ROE CORPORATIONS I  
19 through X,  
20 Defendants.

21 AND ALL RELATED COUNTERCLAIMS  
22 AND CROSS-CLAIMS

23 SEPTEMBER TRUST, DATED MARCH 23,  
24 1972; GERRY R. ZOBRIST AND JOLIN G.  
25 ZOBRIST, AS TRUSTEES OF THE GERRY  
R. ZOBRIST AND JOLIN G. ZOBRIST  
26 FAMILY TRUST; RAYNALDO G.  
SANDOVAL AND JULIE MARIE  
27 SANDOVAL GEGEN, AS TRUSTEES OF  
THE RAYNALDO G. AND EVELYN A.  
28 SANDOVAL JOINT LIVING AND

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.

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 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

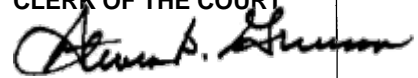
26 Attorneys for Plaintiffs September Trust,

27 Zobrist Trust, Sandoval Trust, and

28 Dennis & Julie Gegen

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/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  
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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

**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 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  
28

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  
15 116.1201.
- 16           b.    The Association did not have any powers beyond those of the "property owners  
17 committee" designation in the Original CC&Rs - simply to care for the  
18 landscaping and other common elements of Rosemere Estates as set forth in  
19 Paragraph 21 of the Original CC&Rs.
- 20           c.    Consistent with the absence of a governing body, the Developer provided each  
21 homeowner the right to independently enforce the Original CC&Rs against one  
22 another.
- 23           d.    The Amended and Restated CC&Rs recorded with the Clark County Recorder's  
24 Office as Instrument No. 20070703-0001934 (the "Amended CC&Rs") are  
25 invalid, and the Amended CC&Rs have no force and effect.

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

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

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.  
26  
27  
28

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.  
15

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.

19           12.      The Fourth Abstract of Judgment recorded as Instrument No. 20160902-0002687  
20       was improperly recorded against the Zobrist Trust Property and constitutes a cloud against the  
21       Zobrist Trust Property.  
22

23       ///

24       ///

25       ///

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28

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

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

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

22           ///

23           ///

24           ///

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DISTRICT COURT JUDGE

**CHRISTENSEN JAMES & MARTIN**

Wesley J. Smith, Esq.  
Nevada Bar No. 11871  
Laura J. Wolff, Esq.  
Nevada Bar No. 6869  
7440 W. Sahara Ave.  
Las Vegas, NV 89117  
Attorneys for Plaintiffs September Trust,  
Zobrist Trust, Sandoval Trust, and  
Dennis & Julie Gegen

FOLEY & OAKES, P.C.

**CHRISTINA H. WANG, ESQ.**  
Nevada Bar No. 9713  
8363 W. Sunset Road, Suite 120  
Las Vegas, Nevada 89113  
Attorneys for Counter-Defendants/Cross-  
Claimants Robert & Yvonne Disman

**DANIEL T. FOLEY, ESQ.**  
Nevada Bar No. 1078  
626 S. 8<sup>th</sup> Street  
Las Vegas, Nevada 89101  
Attorneys for Plaintiffs/Counter-  
Defendants/Cross-Defendants Boulden Trust  
and Lamothe Trust

Nevada Bar No. 11592  
TIMOTHY P. ELSON, ESQ.  
Nevada Bar No. 11559  
1140 N. Town Center Drive, Suite 300  
Las Vegas, Nevada 89144  
Attorneys for Defendants/Counter-  
Claimants Lytle Trust

000713

1           **IT IS SO ORDERED.**

2  
3           Dated this \_\_\_\_ day of May, 2018.

4  
5           \_\_\_\_\_  
6           DISTRICT COURT JUDGE

7           Submitted by:

8           **CHRISTENSEN JAMES & MARTIN**

9           \_\_\_\_\_  
10          Wesley J. Smith, Esq.  
11          Nevada Bar No. 11871  
12          Laura J. Wolff, Esq.  
13          Nevada Bar No. 6869  
14          7440 W. Sahara Ave.  
15          Las Vegas, NV 89117  
16          Attorneys for Plaintiffs September Trust,  
17          Zobrist Trust, Sandoval Trust, and  
18          Dennis & Julie Gegen

19          **Approved as to Form and Content by:**

20          FIDELITY NATIONAL LAW GROUP

21          \_\_\_\_\_  
22          CHRISTINA H. WANG, ESQ.  
23          Nevada Bar No. 9713  
24          8363 W. Sunset Road, Suite 120  
25          Las Vegas, Nevada 89113  
26          Attorneys for Counter-Defendants/Cross-  
27          Claimants Robert & Yvonne Disman

28          GIBBS GIDEN LOCHER TURNER  
            SENET & WITTBRODT LLP

            \_\_\_\_\_  
            RICHARD E. HASKIN, ESQ.  
            Nevada Bar No. 11592  
            TIMOTHY P. ELSON, ESQ.  
            Nevada Bar No. 11559  
            1140 N. Town Center Drive, Suite 300  
            Las Vegas, Nevada 89144  
            Attorneys for Defendants/Counter-  
            Claimants Lytle Trust

            FOLEY & OAKES, P.C.

            \_\_\_\_\_  
            DANIEL T. FOLEY, ESQ.  
            Nevada Bar No. 1078  
            626 S. 8<sup>th</sup> Street  
            Las Vegas, Nevada 89101  
            Attorneys for Plaintiffs/Counter-  
            Defendants/Cross-Defendants Boulden Trust  
            and Lamothe Trust

1 **IT IS SO ORDERED.**

2  
3 Dated this 22 day of May, 2018.

4  
5  
6 **DISTRICT COURT JUDGE**

*L. R.*

7 Submitted by:

8 **CHRISTENSEN JAMES & MARTIN**

9  
10 Wesley J. Smith, Esq.  
11 Nevada Bar No. 11871  
12 Laura J. Wolff, Esq.  
13 Nevada Bar No. 6869  
14 7440 W. Sahara Ave.  
15 Las Vegas, NV 89117  
16 Attorneys for Plaintiffs September Trust,  
17 Zobrist Trust, Sandoval Trust, and  
18 Dennis & Julie Gegen

19 **Approved as to Form and Content by:**

20 **FIDELITY NATIONAL LAW GROUP**

21 CHRISTINA H. WANG, ESQ.  
22 Nevada Bar No. 9713  
23 8363 W. Sunset Road, Suite 120  
24 Las Vegas, Nevada 89113  
25 Attorneys for Counter-Defendants/Cross-  
26 Claimants Robert & Yvonne Dismar

27 **GIBBS GIDEN LOCHER TURNER**  
28 **SENET & WITTBRODT LLP**

RICHARD E. HASKIN, ESQ.  
Nevada Bar No. 11592  
TIMOTHY P. ELSON, ESQ.  
Nevada Bar No. 11559  
1140 N. Town Center Drive, Suite 300  
Las Vegas, Nevada 89144  
Attorneys for Defendants/Counter-  
Claimants Lytle Trust

**FOLEY & OAKES, P.C.**

DANIEL T. FOLEY, ESQ.  
Nevada Bar No. 1078  
626 S. 8<sup>th</sup> Street  
Las Vegas, Nevada 89101  
Attorneys for Plaintiffs/Counter-  
Defendants/Cross-Defendants Boulden Trust  
and Lamothe Trust

1 **IT IS SO ORDERED.**

2  
3 Dated this 28 day of May, 2018.

4  
5   
6 **DISTRICT COURT JUDGE**

7 Submitted by:

8 **CHRISTENSEN JAMES & MARTIN**

9  
10 Wesley J. Smith, Esq.  
11 Nevada Bar No. 11871  
12 Laura J. Wolff, Esq.  
13 Nevada Bar No. 6869  
14 7440 W. Sahara Ave.  
15 Las Vegas, NV 89117  
16 Attorneys for Plaintiffs September Trust,  
17 Zobrist Trust, Sandoval Trust, and  
18 Dennis & Julie Gegen

19 **Approved as to Form and Content by:**

20 **FIDELITY NATIONAL LAW GROUP**

21 CHRISTINA H. WANG, ESQ.  
22 Nevada Bar No. 9713  
23 8363 W. Sunset Road, Suite 120  
24 Las Vegas, Nevada 89113  
25 Attorneys for Counter-Defendants/Cross-  
26 Claimants Robert & Yvonne Disman

27 GIBBS GIDEN LOCHER TURNER  
28 SENET & WITBROOD LLP

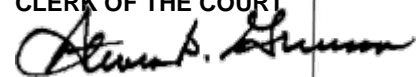
23 RICHARD E. HASKIN, ESQ.  
24 Nevada Bar No. 11592  
25 TIMOTHY P. ELSON, ESQ.  
26 Nevada Bar No. 11559  
27 1140 N. Town Center Drive, Suite 300  
28 Las Vegas, Nevada 89144  
Attorneys for Defendants/Counter-  
Claimants Lytle Trust

**FOLEY & OAKES, P.C.**

DANIEL T. FOLEY, ESQ.  
Nevada Bar No. 1078  
626 S. 8<sup>th</sup> Street  
Las Vegas, Nevada 89101  
Attorneys for Plaintiffs/Counter-  
Defendants/Cross-Defendants Boulden Trust  
and Lamothe Trust

20

20



1 OCNJ

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 **Marjorie B. Boulden Trust,**  
7 **Plaintiff(s)**

CASE NO: A-16-747800-C

8 vs.

DEPT. NO. 18

9 **Trudi Lytle, Defendant(s)**

10  
11 **AMENED ORDER SETTING BENCH TRIAL**

12 IT IS HEREBY ORDERED THAT:

13 A. The above-entitled case is set to be tried without a jury on a five-week stack to  
14 begin **02/19/2019 at 10:00 a.m.**

15 B. A Pretrial Conference with the designated attorney and/or parties in proper person  
16 will be held on **01/08/2019 at 9:00 a.m.** Trial counsel should be prepared to advise the Court  
17 of any potential conflicts they or their witnesses have in the five-week stack. A Settlement  
18 Conference two to three weeks before Calendar Call is strongly recommended.

19 C. A Calendar Call will be held on **02/05/2019 at 9:00 a.m.** Trial Counsel  
20 (and any party in proper person) must appear.

21 D. The Pretrial Memorandum must be served and filed no later than 15 days before  
22 the trial, with a courtesy copy delivered to chambers. EDCR 2.67 must be complied with.

23 E. All discovery deadlines, deadlines for filing dispositive motions and motions to  
24 amend the pleadings or add parties are controlled by the Scheduling Order or the Stipulation  
25 and Order to Extend Discovery.

26 F. All motions in limine shall be filed at least 45 days prior to trial.  
27  
28

1  
2 G. Orders shortening time will not be signed except in extreme emergencies

3 **AN UPCOMING TRIAL DATE IS NOT AN EXTREME EMERGENCY**


4 Failure of the designated trial attorney or any party appearing in proper person to  
5 Appear for any court appearances or to comply with this Order shall result in any of the  
6 following: (1) dismissal of the action; (3) default judgment; (3) monetary sanctions; (4)  
7 vacation of trial date; and/or any other appropriate remedy or sanction.

8 DATED: 12/11/2018

9   
10 MARK B. BAILUS  
DISTRICT COURT JUDGE

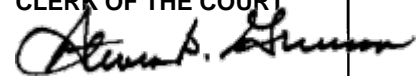
11 CERTIFICATE OF SERVICE

12 I hereby certify that on or about the date filed, a  
13 Copy of this Order was electronically served to  
14 all registered parties via Odyssey.

15   
16 Shannon J. Fagin  
Judicial Executive Assistant

21

21



1 **NEOJ**  
2 CHRISTINA H. WANG, ESQ.  
3 Nevada Bar No. 9713  
4 FIDELITY NATIONAL LAW GROUP  
5 1701 Village Center Circle, Suite 110  
6 Las Vegas, Nevada 89134  
7 Tel: (702) 667-3000  
8 Fax: (702) 243-3091  
9 Email: christina.wang@fnf.com  
10 Attorneys for Counter-Defendants/Cross-Claimants  
11 Robert Z. Disman and Yvonne A. Disman

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

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

16 Plaintiffs,

17 vs.

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

21 Defendants.

22 TRUDI LEE LYTLE, JOHN ALLEN LYTLE, )  
23 THE LYTLE TRUST, )

24 Counter-Claimants,

25 vs.

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

Counter-Defendants.

Case No.: A-16-747800-C

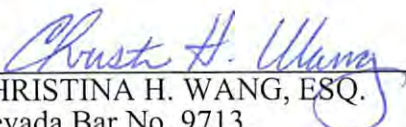
Dept. No.: XVIII

**NOTICE OF ENTRY OF ORDER  
DENYING ROBERT Z. DISMAN AND  
YVONNE A. DISMAN'S MOTION  
FOR SUMMARY JUDGMENT OR, IN  
THE ALTERNATIVE, MOTION FOR  
JUDGMENT ON THE PLEADINGS**

1 PLEASE TAKE NOTICE that on December 26, 2018, the Court entered an ORDER  
2 DENYING ROBERT Z. DISMAN AND YVONNE A. DISMAN'S MOTION FOR  
3 SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, MOTION FOR JUDGMENT ON  
4 THE PLEADINGS in the above-entitled matter, a copy of which is attached hereto as **Exhibit 1**.

5 DATED this 3rd day of January, 2019.

6 FIDELITY NATIONAL LAW GROUP

7   
8 CHRISTINA H. WANG, ESQ.  
9 Nevada Bar No. 9713  
10 1701 Village Center Circle, Suite 110  
11 Las Vegas, Nevada 89134  
12 *Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

The undersigned employee of Fidelity National Law Group, hereby certifies that she served a copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING ROBERT Z. DISMAN AND YVONNE A. DISMAN'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, MOTION FOR JUDGMENT ON THE PLEADINGS** upon the following parties on the date below entered (unless otherwise noted), at the fax numbers and/or addresses indicated below by: [X] (i) placing said copy in an envelope, first class postage prepaid, in the United States Mail at Las Vegas, Nevada, [ ] (ii) via facsimile, [ ] (iii) via courier/hand delivery, [ ] (iv) via overnight mail, [ ] (v) via electronic delivery (email), and/or [X] (vi) via electronic service through the Court's Electronic File/Service Program.

Richard E. Haskin, Esq.  
 Timothy P. Elson, Esq.  
 GIBBS GIDEN LOCHER TURNER  
 SENET & WITTBRODT LLP  
 1140 N. Town Center Drive, Suite 300  
 Las Vegas, Nevada 89144-0596  
*Attorneys for Defendants/Counter-  
 Claimants Trudi Lee Lytle and John  
 Allen Lytle, Trustees of The Lytle Trust*

Daniel T. Foley, Esq.  
 Foley & Oakes, PC  
 1210 S. Valley View Blvd., Suite 208  
 Las Vegas, Nevada 89102  
*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*

Kevin B. Christensen, Esq.  
 Wesley J. Smith, Esq.  
 Laura J. Wolff, Esq.  
 CHRISTENSEN JAMES & MARTIN  
 7440 W. Sahara Ave.  
 Las Vegas, Nevada 89117  
*Attorneys for September Trust, Zobrist  
 Trust, Sandoval Trust and Dennis &  
 Julie Gegn*

DATED: 1/3/19

  
 An employee of Fidelity National Law Group

# EXHIBIT 1

*Steven D. Grierson*

**ORDER**

Richard E. Haskin, Esq.  
Nevada State Bar # 11592

Timothy P. Elson, Esq.  
Nevada State Bar # 11559

**GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP**  
1140 N. Town Center Drive, Suite 300  
Las Vegas, Nevada 89144-0596  
(702) 836-9800

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

Plaintiffs,

v.

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

Defendants.

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

Counter-Claimants,

v.

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

Counter-Defendants.

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

**ORDER DENYING ROBERT Z. DISMAN  
AND YVONNE A. DISMAN'S MOTION  
FOR SUMMARY JUDGMENT OR, IN  
THE ALTERNATIVE, MOTION FOR  
JUDGMENT ON THE PLEADINGS**

Date: August 9, 2018  
Time: 9:00 a.m.

1 Presently before the Court is Counter-Defendants/Cross-Claimants ROBERT Z. DISMAN and  
 2 YVONNE A. DISMAN (collectively, the "Dismans")' Motion for Summary Judgment or, in the  
 3 Alternative, Motion for Judgment on the Pleadings ("Motion") against Defendants/Counter-Claimants  
 4 Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust (collectively, "Lytle Trust") in  
 5 Case No. A-16-747800-C, which came on for hearing on August 9, 2018 at 9:00 a.m. in Department  
 6 XVIII of the Eighth Judicial District Court, Clark County, Nevada.

7 Christina H. Wang, Esq. of Fidelity National Law Group appeared on behalf of the Dismans.  
 8 Richard Haskin, Esq. of Gibbs Giden Locher Turner Senet & Wittbrodt LLP appeared on behalf of  
 9 the Lytle Trust. Daniel T. Foley, Esq. of Foley & Oakes, PC appeared on behalf of Marjorie B.  
 10 Boulden, Trustee of the Marjorie B. Boulden Trust, amended and restated dated July 17, 1996  
 11 ("Boulden Trust") and Linda Lamothe and Jacques Lamothe, Trustees of the Jacques and Linda  
 12 Lamothe Living Trust ("Lamothe Trust") (collectively, the "Boulden Plaintiffs"). Additionally,  
 13 Wesley J. Smith, Esq. of Christensen James & Martin appeared on behalf of the September Trust,  
 14 dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the  
 15 Gerry R. 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. Gegen,  
 18 Husband and Wife, as Joint Tenants ("Dennis & Julie Gegen") (collectively, the "September Trust  
 19 Plaintiffs") in Case No. A-17-765372-C.

20 The Court having considered the pleadings and exhibits, having heard the arguments of  
 21 counsel, and with good cause appearing therefore, the Court hereby makes the following findings and  
 22 enters the following Order.

### 23 FINDINGS

24 1. The Lytle Trust is the owner of certain residential property located in a Clark County,  
 25 Nevada, subdivision called Rosemere Estates ("Rosemere Subdivision").

26 2. In 2009, the Lytle Trust filed a lawsuit against the Rosemere Estates Property Owners  
 27 Association ("Association") in the Eighth Judicial District Court of Clark County, Nevada, Case No.  
 28 A-09-593497-C ("Rosemere Litigation I").

1           3.       The Lytle Trust obtained a monetary judgment against the Association in the Rosemere  
2       Litigation I and subsequently caused to be recorded abstracts of that judgment ("Abstracts of  
3       Judgment") against properties within the Rosemere Subdivision.

4           4.       In 2010, the Lytle Trust filed another lawsuit against the Association in the Eighth  
5       Judicial District Court of Clark County, Nevada, Case No. A-10-631355-C ("Rosemere Litigation II").  
6       The Lytle Trust also obtained a monetary judgment against the Association in that litigation  
7       ("Rosemere Litigation II Judgment").

8           5.       On December 8, 2016, the Boulden Plaintiffs commenced the instant action against the  
9       Lytle Trust alleging causes of action for (1) slander of title, (2) injunctive relief, (3) quiet title, and (4)  
10      declaratory relief. Their Complaint related to the Abstracts of Judgment that the Lytle Trust had  
11      recorded against their properties within the Rosemere Subdivision related to the Rosemere I Litigation.

12          6.       At the time, the Boulden Trust was the owner of the residential property in the  
13      Rosemere Subdivision known as 1960 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel  
14      No. 163-03-313-008 ("1960 Rosemere Court" or "Property").

15          7.       Thereafter, the Boulden Plaintiffs filed a Motion for Partial Summary Judgment, and  
16      on July 25, 2017, the Court issued an Order Granting Motion to Alter or Amend Findings of Fact and  
17      Conclusions of Law ("Order") wherein the Court granted partial summary judgment for the Boulden  
18      Plaintiffs as to cloud on title and injunctive and declaratory relief.

19          8.       The Order specifically states as follows with respect to 1960 Rosemere Court: (1) the  
20      Lytle Trust clouded title to the Property, (2) the Abstracts of Judgment are expunged and stricken from  
21      the record, (3) the Lytle Trust is permanently enjoined from recording and enforcing the Rosemere  
22      Litigation I judgment against the Property, and (4) the Lytle Trust is permanently enjoined from taking  
23      any action in the future against 1960 Rosemere Court based on the Rosemere Litigation I.

24          9.       On July 25, 2017, the Boulden Plaintiffs filed a Second Amended Complaint against  
25      the Lytle Trust. The Second Amended Complaint seeks, in part, to enjoin the Lytle Trust from  
26      recording the Rosemere Litigation II Judgment against the Boulden Plaintiffs' properties.

27          10.      The Boulden Trust subsequently sold 1960 Rosemere Court to the Dismans.

28          11.      On August 11, 2017, the Lytle Trust filed its Answer to the Second Amended

1 Complaint and a Counterclaim against the Lamothe Trust and the Dismans ("Counterclaim"). Therein,  
2 the Lytle Trust named the Dismans as necessary parties to this action as the new owners of the  
3 Property.

4 12. The Lytle Trust's Counterclaim states a single cause of action against the Lamothe  
5 Trust and the Dismans for a declaratory judgment that it is entitled to record a lien and/or abstract of  
6 the Rosemere Litigation I and II Judgments against the Lamothe Trust's property and the Dismans'  
7 Property.

8 13. The Dismans filed the instant Motion seeking summary judgment or, in the alternative,  
9 judgment on the pleadings with respect to the Lytle Trust's Counterclaim.

10 14. In its Opposition to the Motion, the Lytle Trust argued, in essence, that the Motion is  
11 moot because the Court's prior Order with respect to the Boulden Plaintiffs' Motion for Partial  
12 Summary Judgment disposed of the Counterclaim – the only cause of action between the Lytle Trust  
13 and the Dismans.

14 15. After review and consideration, this Court holds that the prior Order, including its  
15 underlying basis, is the law of the case.

16 16. Consequently, as the law of the case, the Order encompasses the Lytle Trust's  
17 Counterclaim.

18 17. The matter is now on appeal before the Nevada Supreme Court. Hence, there is no  
19 cause of action or live controversy between the Lytle Trust and the Dismans upon which this Court  
20 can grant summary judgment or judgment on the pleadings. *See Personhood Nevada v. Bristol*, 126  
21 Nev. 599, 602, 245 P.3d 572, 574 (2010) ("A controversy must be present through all stages of the  
22 proceeding, and even though a case may present a live controversy at its beginning, subsequent events  
23 may render the case moot.") (Citations omitted).

24 ///

25 ///

26 ///

27

28

**ORDER**

THEREFORE,

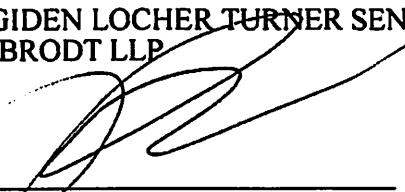
**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Dismans' Motion is DENIED without prejudice as there is no pending cause of action or live controversy between the Lytle Trust and the Dismans.

**IT IS SO ORDERED.**Dated this 26 day of December, 2018.
  
 DISTRICT COURT JUDGE

L.L.

Submitted by:

 GIBBS GIDEN LOCHER TURNER SENET  
 & WITTBRODT LLP

  
 RICHARD E. HASKIN, ESQ.

Nevada Bar No. 11592

DANIEL M. HANSEN, ESQ.

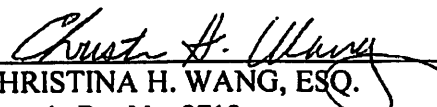
Nevada Bar No. 13886

1140 N. Town Center Drive, Suite 300

Las Vegas, Nevada 89144

Approved as to Form and Content by:

FIDELITY NATIONAL LAW GROUP

  
 CHRISTINA H. WANG, ESQ.

Nevada Bar No. 9713

1701 Village Center Circle, Suite 110

Las Vegas, Nevada 89134

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

22

22

**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	)	Case No. A-16-747800-C
THE MARJORIE B. BOULDEN TRUST,	)	Dept. No. IX
LINDA LAMOTHE AND JACQUES	)	
LAMOTHE, TRUSTEES OF THE JACQUES	)	
& LINDA LAMOTHE LIVING TRUST	)	
	)	
Plaintiffs,	)	<b>NOTICE OF ENTRY OF</b>
	)	<b>STIPULATION AND ORDER TO</b>
	)	<b>DISMISS ALL REMAINING</b>
	)	<b>CLAIMS WITHOUT</b>
vs.	)	<b>PREJUDICE</b>
	)	
TRUDI LEE LYTLE AND JOHN ALLEN	)	
LYTLE, AS TRUSTEES OF 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 )  
 DEVOLUTION TRUST DATED MAY 27, )  
 1992; and DENNIS A. GEGEN AND JULIE )  
 GEGEN, HUSBAND AND WIFE AS JOINT )  
 TENANTS, )

Plaintiffs )

v. )

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

Defendants. )

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

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

TO: All Parties and their counsel:

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

Dated: January 14, 2019.

FOLEY & OAKES, PC

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

**CERTIFICATE OF SERVICE**

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

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

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

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

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

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

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

/s/ Liz Gould  
An employee of FOLEY & OAKES

EXHIBIT “A”

EXHIBIT “A”

*Steven D. Grierson*

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

000732

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.

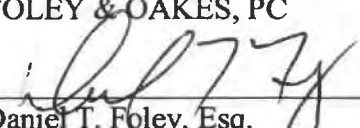
3 IT IS FURTHER STIPULATED AND AGREED that Robert Z. Disman's and Yvonne A.  
4 Disman's Crossclaim against the Boulden Trust filed September 26, 2017, be dismissed without  
5 prejudice and that each of these parties shall bear their own attorney's fees and costs associated  
6 with the Crossclaim 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

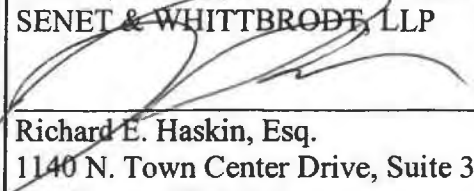
11 It is further stipulated that the parties are not dismissing any currently pending appeals from  
12 decisions of the above captioned court or stipulating as to anything related to the right to file any  
13 future appeals from future decisions of the above captioned court related to this matter.

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

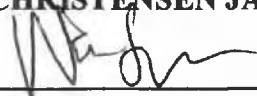
22   
23 Richard E. Haskin, Esq.  
24 1140 N. Town Center Drive, Suite 300  
Las Vegas, NV 89144  
Attorneys for Defendants

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**

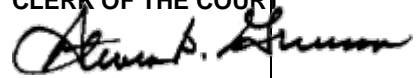
16 It is so ORDERED.

17 DATED this 10<sup>th</sup> day of January 2019.

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

23

23



**MOSC**  
**CHRISTENSEN JAMES & MARTIN**  
KEVIN B. CHRISTENSEN, ESQ. (175)  
WESLEY J. SMITH, ESQ. (11871)  
LAURA J. WOLFF, ESQ. (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, *et*  
*al.*,

Plaintiffs,

vs.

TRUDI LEE LYTLE, *et al.*,

Defendants.

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

**PLAINTIFFS' MOTION FOR AN  
ORDER TO SHOW CAUSE WHY  
THE LYTLE TRUST SHOULD  
NOT BE HELD IN CONTEMPT  
FOR VIOLATION OF COURT  
ORDERS**

SEPTEMBER TRUST, DATED MARCH 23,  
1972, *et al.*,

Plaintiffs,

vs.

TRUDI LEE LYTLE AND JOHN ALLEN  
LYTLE, AS TRUSTEES OF THE LYTLE  
TRUST, *et al.*,

Defendants.

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

Consolidated

HEARING REQUESTED

September Trust, dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust Dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint Tenants

1 (“Gegen”) (hereafter September Trust, Zobrist Trust, Sandoval Trust and Gegen may be  
2 collectively referred to as “Plaintiffs”), by and through their attorneys, Christensen James &  
3 Martin, petition the Court for an Order to Show Cause why Defendants, Trudi Lee Lytle and  
4 John Allen Lytle, As Trustees of the Lytle Trust (“Defendants” or “Lytle Trust”), should not be  
5 held in contempt of this Court’s Order Granting Motion for Summary Judgment or, in the  
6 Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary  
7 Judgment executed by the Judge on May 22, 2018 and filed with the Court on May 24, 2018  
8 (hereafter “May 2018 Order”). This Motion is based upon the following Memorandum of Points  
9 and Authority, Exhibits, Affidavits, all other documents on file with the Court in this matter, and  
10 any argument allowed at the time of the hearing of this matter.

11 DATED this 4th day of March 2020.

CHRISTENSEN JAMES & MARTIN

By: /s/ Wesley J. Smith

Wesley J. Smith, Esq.

Nevada Bar No. 11871

*Attorneys for September Trust, Zobrist  
Trust, Sandoval Trust and Gegen*

15 **NOTICE OF MOTION**

16 You will please take Notice that the September Trust, Zobrist Trust, Sandoval Trust and  
17 Gegen shall bring the above and foregoing Plaintiffs’ Motion for Order to Show Cause on for  
18 hearing before Department XVI on the date and time to be set by the Court and noticed to the  
19 parties registered for service through the “Clerk’s Notice of Hearing” once a hearing date has  
20 been set.

21 DATED this 4th day of March 2020.

CHRISTENSEN JAMES & MARTIN

By: /s/ Wesley J. Smith

Wesley J. Smith, Esq.

Nevada Bar No. 11871

*Attorneys for Intervenor September Trust,  
Zobrist Trust, Sandoval Trust and Gegen*

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### INTRODUCTION

In May 2018, this Court entered a permanent injunction against the Lytle Trust from seeking to enforce the Judgments obtained in the Rosemere Litigation I, Rosemere Litigation II and Rosemere Litigation III, or any other judgments obtained against the Association, from the Plaintiffs' or their properties. Two weeks later, the Lytle Trust filed a new case seeking the appointment of a receiver to ultimately act as its personal collection agent against the Plaintiffs and their properties. The Lytle Trust materially misrepresented that the Amended CC&Rs governed and failed to inform the Court that a permanent injunction prohibited such action. Without opposition and based on the Lytle Trusts' intentionally misleading statements, a Receiver was appointed. The Receiver then contacted the Plaintiffs, stating:

the appointment of the receivership is predicated on judgments against the HOA in the approximate amount of \$1,481,822 by the Lytle family ("the Plaintiff"). ... These judgments need to be paid and the Court agreed with the Plaintiff by appointing a Receiver to facilitate the satisfying of the judgments....We would like to meet with title holding members of the HOA...[to] share three ideas we have to pay these judgments.

The Receiver enclosed a copy of an Order purporting to give the Receiver power to "issue and collect a special assessment upon all owners within the Association to satisfy the Lytle Trust's judgments against the Association."

As will be discussed below, the Lytle Trust's filing of the Receiver Action, the Lytle Trust's efforts to appoint the Receiver, and the Receiver's attempt to collect the Judgments obtained in the Rosemere Litigation I, Rosemere Litigation II and Rosemere Litigation III, or any other judgments obtained against the Association, from the Plaintiffs' or their properties are direct violations of the permanent injunction. This should not be tolerated by the Court. The purpose of this Motion is for the Court to issue an Order to Show Cause why the Defendants should not be sanctioned for their willful violations of the Permanent Injunction.

1 **II.**

2 **STATEMENT OF FACTS**

3 On May 22, 2018, this Court signed an Order Granting Motion for Summary Judgment  
4 or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for  
5 Summary Judgment ("May 2018 Order"). The May 2018 Order was entered by the Court on  
6 May 24, 2018. On June 19, 2018, the Lytle Trust appealed the May 2018 Order to the Nevada  
7 Supreme Court, Case No. 76198 ("Appeal"). The Supreme Court entered its Order affirming the  
8 May 2018 Order on March 2, 2020.<sup>1</sup>

9 The Plaintiffs hereby incorporate the findings of fact and conclusions of law from the  
10 May 2018 Order as if set forth fully herein. Especially significant is this permanent injunction  
11 language in the May 2018 Order:

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

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 Plaintiffs or their properties based upon the Rosemere**  
**Litigation I, Rosemere Litigation II or Rosemere Litigation III.**

18 May 2018 Order at 10:10-19 (emphasis added). Thus, the Lytle Trust is prohibited from taking  
19 any action against the Plaintiffs or their properties based on any judgment it has obtained against  
20 the Rosemere Association.

21 The May 2018 Order also contained these key findings of fact and conclusions of law:

22 2. The Association is a "limited purpose association" as referenced in NRS  
23 116.1201(2).

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

26 <sup>1</sup> A true and correct copy of the Order of Affirmance of the May 2018 Order is attached to the  
27 Motion as Exhibit 8.  
28

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

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

6 6. The Plaintiffs were not 'losing parties' in the Rosemere Litigation I,  
7 Rosemere Litigation II or Rosemere Litigation III as per Section 25 of the Original  
8 CC&Rs.

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

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

13 May 2018 Order at 7-8.

14 The May 2018 Order followed a prior Order issued by the Court in the lead consolidated  
15 Case (Case No. A-16-747800-C) on July 25, 2017 ("July 2017 Order") in favor of other similarly  
16 situated property owners, Marjorie B. Boulden, Trustee of the Marjorie B. Boulden Trust  
17 ("Boulden"), and Linda Lamothe and Jacques Lamothe, Trustees of the Jacques & Linda  
18 Lamothe Living Trust ("Lamothe"). The Plaintiffs also incorporate the findings of fact and  
19 conclusions of law from the July 2017 Order. The Lytles appealed the July 2017 Order and the  
20 Nevada Supreme Court issued an Order of Affirmance on December 4, 2018 in Case No. 73039,  
21 *Trudi Lee Lytle v. Marjorie B. Boulden*. Exhibit 1, Order of Affirmance.

22 The Order of Affirmance unequivocally and absolutely holds that a judgment obtained by  
23 the Lytle Trust against the limited-purpose Rosemere Association cannot be enforced against  
24 individual owners or their properties, especially "property owners who were not parties to the  
25 Lytles' complaint against Rosemere Estates, and whose property interests had never been subject  
26 of any suit." Exhibit 1, Order of Affirmance at 6. The Order of Affirmance specifically states:

27 NRS 116.1201(2)(a) provides, in relevant part, that limited purpose associations  
28 are not subject to NRS Chapter 116, with enumerated statutory exceptions, NRS  
116.3117 not among them. NRS 116.3117(1)(a) states that a monetary judgment  
against an association, once recorded, is a lien against all real property of the  
association and all of the units in the common-interest community. An  
"association" is defined as a unit-owners' association organized under NRS  
116.3101. NRS 116.011. A unit-owners' association must be in existence on or  
before the date when the first unit is conveyed. NRS 116.3101.

1 Here, the Lytles do not dispute that the Association is a limited purpose  
2 association. Although they assert that properties within limited purpose  
3 associations are subject to NRS 116.3117's lien provisions, NRS 116.1201 spells  
4 out the specific statutes within NRS Chapter 116 that apply to limited purpose  
5 associations, and NRS 116.3117 is not among them. Aside from those listed  
6 statutes, NRS Chapter 116 "does not apply to [a] limited purpose association."  
7 NRS 116.1201(2)(a). Thus, the plain language of the statute is clear that limited  
8 purpose associations are not subject to NRS 116.3117's lien provisions. By listing  
9 exactly which provisions within NRS Chapter 116 apply to limited purpose  
10 associations, NRS 116.1201 does not leave any room for question or expansion in  
11 the way the Lytles urge. We are likewise not persuaded by the Lytles' further  
12 contention that they may place a valid judgment lien on the Boulden and Lamothe  
13 properties through a series of statutory incorporations.

14 Exhibit 1, Order of Affirmance at 4. In summary, the Order of Affirmance expressly states that  
15 the statutory mechanism for collecting judgments against an association under NRS 116.3117 is  
16 not available for the Lytle Trust's judgments. Exhibit 1, Order of Affirmance at 3-6.

17 Despite the July 2017 Order, May 2018 Order, and the Order of Affirmance, on or around  
18 January 22, 2020, the Plaintiffs each received a letter from Kevin Singer of Receivership  
19 Specialists ("Receiver Letter") regarding the appointment of Mr. Singer as a Receiver in Case  
20 No. A-18-775843-C, *Trudi Lee Lytle et al. v. Rosemere Estates Property Owners' Association*  
21 ("Receivership Action"). Exhibit 2, Receiver Letter; Affidavit of Karen Kearl ("Kearl  
22 Affidavit"); Affidavit of Gerry Zobrist ("Zobrist Affidavit"); Affidavit of Julie Marie Sandoval  
23 Gegen ("Gegen Affidavit") (hereafter Kearl Affidavit, Zobrist Affidavit and Gegan Affidavit are  
24 collectively "Plaintiffs' Affidavits"). In the Receiver Letter, Mr. Singer states that "the  
25 appointment of the receivership is predicated on judgments against the HOA in the approximate  
26 amount of \$1,481,822 by the Lytle family ("the Plaintiff").... These judgments need to be paid  
27 and the Court agreed with the Plaintiff by appointing a Receiver to facilitate the satisfying of the  
28 judgments.... We would like to meet with title holding members of the HOA...[to] share three  
ideas we have to pay these judgments." See Exhibit 2 at 1.

29 The Receiver Letter included the Order Appointing a Receiver of Defendant Rosemere  
30 Property Owners Association ("Order Appointing Receiver") as an enclosure. Exhibit 3, Order  
31 Appointment Receiver. The Order Appointing Receiver directs the Receiver to "issue and collect

1 a special assessment upon all owners within the Association to satisfy the Lytle Trust's  
2 judgments against the Association." *Id.* at 2.

3 On January 29, 2020, Plaintiffs' attorney Wesley J. Smith sent a letter to the Receiver  
4 notifying him that his actions were in direct violation of the Permanent Injunction issued in this  
5 Case, demanded that he cease and desist from any further effort to collect any judgment or take  
6 any action against the Plaintiffs, demanded that any further communication with the Plaintiffs be  
7 directed through counsel, and demanded that the Receiver, as an officer of the Court, notify the  
8 Receivership Action Court of this Court's May 2018 Order and of violation of the Permanent  
9 Injunction. Exhibit 4, Smith Letter.

10 On January 30, 2020, the Receiver sent a letter directly to each of the Plaintiffs  
11 explaining that he would seek additional instructions from the Receivership Action Court  
12 through his attorney based on the information obtained from Mr. Smith. Exhibit 5, January 30,  
13 2020 Letter. As of the date of this Motion, the Receiver's attorney has not filed any paperwork  
14 regarding these issues in the Receivership Action. *See* Affidavit of Wesley J. Smith ("Smith  
15 Aff.") at ¶ 9.

16 The Plaintiffs have discovered that the Receivership Action was filed on June 8, 2018,  
17 just two weeks after this Court entered its May 2018 Order. The Complaint alleges that the  
18 Rosemere Estates Property Owners' Association ("Association") is not functioning, that the  
19 common elements of the community are not being maintained, and that "the Association has not  
20 paid known creditors of the Association, which includes...the Lytles, which hold multiple  
21 judgments against the Association." Exhibit 6, Complaint at ¶ 21.

22 In the Renewed Application for Appointment of Receiver filed on October 24, 2019  
23 ("Application") in the Receivership Action, the Lytle Trust asserts that the main purpose in  
24 requesting a Receiver is to require the owners in the Subdivision to pay the Rosemere I, II and III  
25 Judgments. Exhibit 7, Application at 3:2-4, 5:17-18 ("Additional grounds exist because the  
26 Association is refusing to pay and refusing to assess Association members related to various  
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1 monetary judgments awarded to the Lytles against the Association”), 13:19-28 (“a receiver may  
2 be appointed...after judgment, to carry the judgment into effect”), 14:1-2, 16-28 (“the Lytle Trust  
3 obtained judgments against the Association and a Receiver is needed to carry those judgments  
4 into effect”), 15:20-25 (“the Association has a duty...to pay its debts, including the Judgments  
5 obtained by the Lytle Trust”), 16:17-22 (“the Association is without any governing body to  
6 assess the homeowners and pay the judgments”).

7 The Lytle Trust provides careful and selected detail about the Rosemere I, II and III cases  
8 in the Application but fails to mention either of these consolidated cases or appeals. Most  
9 importantly, the Lytle Trust failed to inform the court about the July 2017 Order, the May 2018  
10 Order, or the Order of Affirmance. *See* Exhibit 7, Application generally.<sup>2</sup> The Lytle Trust did not  
11 inform the Receivership Action Court that there is a permanent injunction issued by this Court  
12 directly related to and prohibiting enforcement of Rosemere judgments against the Plaintiffs or  
13 their properties. Yet, the very purpose of the Order Appointing Receiver is to attempt to collect  
14 the Rosemere judgments from the Plaintiffs.

### 15 III.

### 16 ARGUMENT

17 The Lytle Trust’s attempts to appoint a Receiver to collect on the Judgments against the  
18 Plaintiffs or their properties, to use the Amended CC&Rs, and to expand the powers granted to  
19 the Association (and the Receiver) by the original CC&Rs and NRS 116.1201 are in clear  
20 violation of this Court’s May 2018 Order. The relief requested in the Application and entered in  
21 the Receivership Order is blatantly calculated to ignore this Court’s May 2018 Order and  
22 provides relief this Court clearly prohibited the Lytle Trust from seeking. Once improperly  
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24 <sup>2</sup> In a footnote at the very end of the Application, the Lytle Trust states: “The Lytle Trust is  
25 evaluating whether any of the judgments preclude enforcement, even in small part, against any or  
26 all of the Association’s other members.” Exhibit 7, Application at 18, n 5. This statement is  
27 meaningless. The Lytle Trust actively sought the appointment of a receiver to enforce those  
28 judgments against the property owners.

1 empowered, the Receiver's letter to the Plaintiffs seeking to collect the Lytle Trust's judgments  
2 violated this Court's permanent injunction. Thus, Plaintiffs are now seeking an Order to Show  
3 Cause and are requesting their attorney's fees and costs for having to bring this Motion.

4 **A. This Court Should Use Its Inherent Power to Enforce its May 2018 Order.**

5 This court has inherent power to protect the dignity and decency in its proceedings and to  
6 enforce its decrees, orders and judgments. *Halverson v. Hardcastle*, 123 Nev. 245, 261, 163 P.3d  
7 428, 440 (Nev. 2007); *see also In re Determination of Relative Rights of Claimants &*  
8 *Appropriators of Waters of Humboldt River Sys. & Tributaries v. State Eng'r of the State of Nev.*  
9 *& Water Comm'rs of the Sixth Jud. Dist. Ct.*, 59 P.3d 1226, 1229 (Nev. 2002). "Further, courts  
10 have the inherent power to prevent injustice and to preserve the integrity of the judicial  
11 process...." *Halverson*, 123 Nev., at 262. A party is required to adhere to court orders, even  
12 erroneous orders, until terminated or overturned. *Rish v. Simao*, 368 P.3d 1203, 1210 (Nev.  
13 2016). Thus, this Court's May 2018 Order is in effect and should be enforced.

14 Pursuant to NRS 22.010(3), a party may be held in contempt of court for "disobedience  
15 or resistance to any lawful...order...issued by the court...." In Nevada, courts have the "inherent"  
16 ability to compel obedience to its orders through their contempt powers. *See Phillips v. Welch*,  
17 12 Nev. 158, 801 P.2d 1363 (1877); *Lamb v. Lamb*, 83 Nev. 425, 428, 433 P.2d 265 (1967)  
18 ("The power of courts to punish for contempt...is inherent"). District court judges are afforded  
19 broad discretion in imposing sanctions for contempt. *See Young v. Johnny Ribeiro Building*, 106  
20 Nev. 88, 92, 787 P.2d 777, 779 (1990). Generally, "an order for civil contempt must be grounded  
21 upon one's disobedience of an order that spells out 'the details of compliance in clear, specific  
22 and unambiguous terms so that such person will readily know exactly what duties or obligations  
23 are imposed on him.'" *Southwest Gas Corp. v. Flintkote Co.*, 99 Nev. 127, 131, 659 P.2d  
24 861,864 (1983) (*quoting Ex Parte Slavin*, 412 S.W.2d 43, 44 (Tex. 1967)).

25 The moving party has the burden of showing by clear and convincing evidence that the  
26 party against whom contempt is sought violated a specific and definite court order. *In re*  
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1 *Bennett*, 298 F.3d 1059, 1069 (9th Cir. 2002). If the moving party meets this burden, the burden  
2 shifts “to the contemnors to demonstrate why they were unable to comply.” *Id.*  
3 A party may be found in civil contempt for disobedience of a specific and definite court order if  
4 it fails to take all reasonable steps within its power to comply. *In Re Dual-Deck Video Cassette*  
5 *AntiTrust Lit.*, 10 F.3d 693, 695 (9th Cir. 1993). The contempt “need not be willful,” and there is  
6 no good faith exception to the requirement to obey a court order. *Id.*

7 The permanent injunction in the May 2018 Order is specific and definite. “The Lytle  
8 Trust is permanently enjoined from recording and enforcing the Judgments obtained from the  
9 [Rosemere cases], or any other judgments obtained against the Association, against the”  
10 Plaintiffs properties. May 2018 Order at 10. Further, “the Lytle Trust is permanently enjoined  
11 from taking any action in the future directly against the Plaintiffs or their properties based upon  
12 the [Rosemere cases].” *Id.* There is no ambiguity in those direct orders to the Lytle Trust. As will  
13 discussed below, the Lytle Trust clearly violated the permanent injunction. The burden is on the  
14 Lytle Trust to demonstrate why they were unable to comply, or rather, why they took affirmative  
15 actions to violate the May 2018 Order.

16 **B. The Order Appointing Receiver Violates the May 2018 Order.**

17 The Complaint initiating the Receivership Action was filed just two weeks after the May  
18 2018 Order was entered in this Case. Exhibit 6, Complaint. The Lytle Trust did not seek a  
19 receiver in this case or any of the three prior cases in which it obtained judgments against the  
20 Association. Instead, the Lytle Trust initiated a brand-new case, virtually assuring that a new  
21 judge would be assigned that would not have knowledge of the prior litigation and would not be  
22 aware of this Court’s Orders.

23 While the timing and circumstances of the new case filing are suggestive of the Lytle  
24 Trust’s intent, the pleadings and motions filed in the Receivership Action demonstrate an effort  
25 to thwart this Court’s Orders. The Lytle Trust purposefully and selectively presented facts to a  
26 new judge, conveniently leaving out key findings of fact and conclusions of law from the  
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1 Rosemere I, II, and III cases, and completely ignoring this Case entirely, including failing to  
2 inform the court about the permanent injunction in the May 2018 Order (or the similar  
3 permanent injunction in the July 2017 Order). This breach of duty of candor to the Court resulted  
4 in the Order Appointing Receiver that the Lytle Trust is now trying to use to obtain payment  
5 from the Plaintiffs in clear contravention of the May 2018 Order.

6 The Lytle Trust made representations to the court in the Receivership Action that directly  
7 contradict the conclusions of law from this Court. The May 2018 Order prohibits “recording and  
8 enforcing the Judgments obtained from the Rosemere Litigation I, Rosemere Litigation II and  
9 Rosemere Litigation III, or any other judgments obtained against the Association” against the  
10 Plaintiffs or their properties. The Order Appointing Receiver breaches this prohibition, as  
11 follows:

12 [The Receiver has the authority to] Issue and collect a special assessment upon all  
13 owners within the Association to satisfy the Lytle Trust’s judgments against the  
14 Association.... The Receiver has the authority to assess all Association unit owners  
15 to pay for any operation costs or to pay for judgments against the Association. If  
16 an Association member does not pay an assessment then the Receiver may proceed  
17 to foreclose on said members ownership interest in the property.

18 Exhibit 3, Order Appointing Receiver at 2:19-20, 6:4-7. This language is an egregious attempt by  
19 the Lytle Trust to obtain payment on the Judgments in clear violation of this Court’s May 2018  
20 Order.

21 The May 2018 Order holds that “the Association is a ‘limited purpose association’ as  
22 referenced in NRS 116.1201(2).” May 2018 Order at 7:20-21. It also concluded that “the  
23 Amended CC&Rs were judicially declared to have been improperly adopted and recorded, the  
24 Amended CC&Rs are invalid and have no force and effect and were declared void ab initio.” *Id.*  
25 at 7:24-28. Thus, the Amended CC&R’s cannot grant the Association, or any receiver appointed  
26 to act on its behalf, any authority because they have no force or effect. The only powers the  
27 Association or Receiver would be entitled to exercise are those enumerated in the original  
28

1 CC&Rs or NRS 116.1201(2) regarding a limited-purpose association created to maintain  
2 landscaping and other common elements.<sup>3</sup>

3 The Order Appointing Receiver grants the Receiver authority that exceeds the authority  
4 granted to the Association by NRS 116.1201 and the original CC&Rs. This directly contradicts  
5 the May 2018 Order. The Order Appointing Receiver supposes to grant the Receiver broad  
6 powers that the Association would not otherwise possess by statute or its enabling document. *See*  
7 Exhibit 3, Order Appointing Receiver at 2-9. A perfect example of this is the authority to “issue  
8 and collect a special assessment upon all the owners within the Association to satisfy the Lytle  
9 Trust’s judgments against the Association” as discussed above. Exhibit 3, Order Appointing  
10 Receiver. The original CC&Rs do not contain any power of special assessment. Further, NRS  
11 116.3117, which would allow judgments against an association to be liens against the individual  
12 properties in the community, is not included in NRS 116.1201’s list of applicable provisions.  
13 The Nevada Supreme Court has conclusively ended any debate on that issue. *See* Exhibit 1,  
14 Order of Affirmance at 3-6.

15 As discussed herein, the July 2017 Order, the May 2018 Order, or the Order of  
16 Affirmance directly contradict much of the Lytle Trusts’ argument regarding application of the  
17 Amended CC&Rs and the legality of an assessment against the Plaintiffs. *Compare, e.g.,* Exhibit  
18 7, Application at 12-13 (presenting arguments regarding *Mackintosh*) with Exhibit 1, Order of  
19 Affirmance at 5-6 (rejecting the Lytle Trust’s *Mackintosh* arguments: “Nothing in *Mackintosh*  
20 suggests that [it] applies beyond the context of contractual agreements and the circumstances of  
21 that case, and we are not persuaded that it otherwise provides a basis for expanding the

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23 <sup>3</sup> These include the following sections of NRS 116, *only*: NRS 116.31155 - Pay the fees imposed  
24 on the Association to pay for the costs of administering Office of Ombudsman and Commission;  
25 NRS 116.31158 - Register the Association with the Ombudsman; NRS 116.31038 - Deliver to  
26 the Association certain property held or controlled by declarant; NRS 116.31083 – Notice and  
27 hold meetings of the executive board, take minutes and periodically review certain financial and  
28 legal matters at meetings; NRS 116.31152 – Prepare a study of reserve in accordance with the  
requirements of this section including submission to the Division; NRS 116.31073 - Maintain,  
repair, restore and replace security walls; and NRS 116.4101 to 116.4112 – Comply with the  
requirements for a Public Offering Statement pursuant to these sections.

1 application of NRS 116.3117.”). The May 2018 Order and the Order of Affirmance specifically  
2 rejected the ability to assess the judgments against the property owners pursuant to the Amended  
3 CC&Rs or NRS 116.3117. *See* May 2018 Order at 7-8; Exhibit 1, Order of Affirmance at 4-8.  
4 Yet that is exactly Lytle Trust argues the Receiver should be able to do. *See* Exhibit 7,  
5 Application at 11:4-28 (“4. The Amended CC&Rs Grant the Association Authority to Assess  
6 Each Unit for Payment of Judgments Against the Association”), 13:1-17, 17:1-9 (“the Amended  
7 CC&Rs provide the Association with the ability to specially assess each unit owner for payment  
8 of the judgments”).<sup>4</sup> As such, the Lytle Trust is in breach of this Court’s May 2018 Order and  
9 should be held in contempt of this Court.

10 **C. The Lytle Trust Cannot Bypass the Permanent Injunction or This Court’s Orders**  
11 **by Hiding Behind the Receiver.**

12 The permanent injunction binds the Lytle Trust, its “officers, agents, servants, employees,  
13 and attorneys; and other persons who are in active concert or participation” with the Lytle Trust.  
14 *See* NRCP 65(d)(2). The Lytle Trust had actual notice of the May 2018 Order as it was a party to  
15 this Case and appealed (and lost) the May 2018 Order to the Nevada Supreme Court. It is also  
16 clear that the Lytle Trust sought out the Receiver’s services, presented him to the Court, and  
17 advanced the Receiver’s costs. The Lytle Trust’s counsel wrote the Order Appointing Receiver.  
18 The Receiver then acted based on the direction provided by the Lytle Trust, following a course  
19 of action set in motion by the Lytle Trust.

20 The Lytle Trust was unquestionably prohibited by the May 2018 Order from taking any  
21 action to collect the Rosemere judgments from the Plaintiffs or their properties. The Lytle Trust  
22 was further bound by the July 2017 Order and the Nevada Supreme Court’s Order of  
23 Affirmance. The express purpose of the Lytle Trust seeking appointment of the Receiver was so  
24 that the Receiver could make assessments against the Plaintiffs’ properties to satisfy the Lytle

25 \_\_\_\_\_  
26 <sup>4</sup> Of course, the Lytle Trust argues its own property should NOT be subject to an equal burden of  
27 assessment. Exhibit 7, Application at 17:10-28, 18:1-7 (arguing the Lytle Trust will not be made  
28 whole if it is required to pay some of the punitive damages).

1 Trust's judgments against the Association. The Lytle Trust was not legally permitted to seek  
2 collection from the Plaintiffs or their properties in this manner. Passing the illegal collection  
3 effort to the Receiver cannot be used to circumvent the July 2017 Order, Order of Affirmance, or  
4 the May 2018 Order.

5 Further, the July 2017 Order, Order of Affirmance, and May 2018 Order set forth certain  
6 rules of law regarding the legal rights of the Association. The Order Appointing Receiver  
7 purports to give the Receiver power to act on behalf of the Association to do things that the  
8 Association had the power to do but was failing or refusing to do. The July 2017 Order, Order of  
9 Affirmance, and May 2018 Order directly impact those powers. For instance, the Amended  
10 CC&Rs are *void ab initio* and NRS 116.3117 is not applicable to the Association. Therefore, the  
11 Receiver acting in the Association's place cannot use the Amended CC&Rs or NRS 116.3117 to  
12 accomplish anything because they have no force or effect on the Association and grant it no  
13 rights. In other words, the appointment of the Receiver cannot alter legal realities or bypass the  
14 July 2017 Order, Order of Affirmance, and May 2018 Order.

15 **D. The Receiver's Letter Violates the May 2018 Order.**

16 In May 2018, the Plaintiffs obtained a permanent injunction from this Court prohibiting  
17 the Lytle Trust from "recording and enforcing the Judgments obtained from the Rosemere  
18 Litigation I, Rosemere Litigation II and Rosemere Litigation III, or any other judgments obtained  
19 against the Association" against the Plaintiffs or their properties. May 2018 Order at 10. In  
20 January 2020, the Receiver violated the May 2018 Order by threatening to "issue and collect a  
21 special assessment upon all owners within the Association to satisfy the Lytle Trust's judgments  
22 against the Association." Exhibit 3, Order Appointing Receiver at 2 (included with Receiver  
23 Letter). The January 22, 2020 letter from the Receiver specifically stated that "the appointment  
24 of the receivership is predicated on judgments against the HOA in the approximate amount of  
25 \$1,481,822 by the Lytle family ("the Plaintiff"). ... These judgments need to be paid and the  
26 Court agreed with the Plaintiff by appointing a Receiver to facilitate the satisfying of the  
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1 judgments....We would like to meet with title holding members of the HOA...[to] share three  
2 ideas we have to pay these judgments.” Exhibit 2 at 1. In other words, following a course of  
3 action set in motion by the Lytle Trust, the Receiver was attempting to do exactly what the May  
4 2018 Order enjoined the Lytle Trust from doing.

5 **E. The Lytle Trust Did Not Engage in Good Faith Compliance and Failed to Take Any**  
6 **Corrective Action**

7 The Plaintiffs have established with clear and convincing evidence that the May 2018  
8 Order has been violated. The violations are so direct and intentional, that there cannot possibly  
9 be an argument that the Lytle Trust made good faith reasonable efforts to comply with the terms  
10 of the permanent injunction and has substantially complied. Additionally, The Plaintiffs sent a  
11 letter to the Receiver, with copy to the Lytle Trust, on January 29, 2020, notifying them that the  
12 actions were in direct violation of the May 2018 Order. No corrective action has been taken in  
13 this Case or the Receivership Action. *See cf. Boink Sys., Inc. v. Las Vegas Sands Corp.*, No.  
14 2:08-CV-00089-RLH, 2011 WL 3419438, at \*3 (D. Nev. Aug. 3, 2011) (no contempt where  
15 violator made good faith reasonable efforts to comply and took immediate corrective action).  
16 Thus, contempt penalties are appropriate here.

17 **F. The Lytle Trust and its Counsel Should be Assessed Penalties, Including Plaintiffs’**  
18 **Attorney’s Fees and Costs, for Violating the May 2018 Order.**

19 A \$500 penalty may be assessed and imprisonment not exceeding 25 days may be  
20 ordered for each violation of the May 2018 Order. NRS 22.100(2). In addition, the court may  
21 require the Lytle Trust, its counsel, and/or the Receiver to pay to the Plaintiffs their “reasonable  
22 expenses, including, without limitation, attorney’s fees, incurred by the party as a result of the  
23 contempt. NRS 22.100(3); *Keresey v. Rudiak*, No. 75177-COA, 2019 WL 3967438, at \*6 (Nev.  
24 App. Aug. 21, 2019) (attorney’s fees for time spent preparing and arguing their motion for an  
25 order to show cause, renewed motion for an order to show cause, and for time related to the  
26 hearing associated with those motions were proper). A sanction for “[c]ivil contempt is  
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