

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioner,

V.

EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, FAMILY DIVISION,
CLARK COUNTY; THE
HONORABLE FRANK P.
SULLIVAN,

Respondents,

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

Real Parties in Interest.

Supreme Court Case No.:

Electronically Filed
District Ct. Case No. 2020-01344 p.m.
Jul 31 2020
Elizabeth A. Brown
Clerk of Supreme Court

**SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF
MANDAMUS OR OTHER EXTRAORDINARY RELIEF
VOLUME II**

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

5 Order, pg. 18.

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

14 Order, pg. 23, note 6.

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

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

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

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

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

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

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

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

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

7 Rule 5.517. Joint preliminary injunction (JPI).

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

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

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

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

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

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

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

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

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

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

8 Eric and ELN Trust object to the sale of the Brianhead cabin because
9 they do not want to sell, and the property secures monies that may be
10 owed between the parties upon entry of a final judgment. NRS 125.040
11 allows the Court to make any order affecting the property of the parties,
12 including any separate property of the parties, which it deems necessary
13 to enable a party to carry on or defend suit. This litigation has been
14 extremely costly and Lynita is in need of additional funds to continue to
15 defend her interests in this action. The Court made clear at the August 8,
16 2017 hearing that it does not believe the parties should continue to be
17 business partners or jointly hold property following the conclusion of this
18 matter. There is plenty of security in the Lindell building – valued at
19 \$1,145,000 at the time of divorce – to secure any amounts that may later
20 be found to be owed between the parties. Accordingly, the Court should
21 order the sale of the Brianhead cabin. If Eric and ELN Trust are given the
22 opportunity to purchase Lynita's one-half (1/2) share of the cabin, the
23 Court should appoint Mr. Bertsch to obtain a neutral appraisal of the
24 cabin, and should ensure that any payment made to Lynita at this time is
25 properly accounted for in the Court's final division of property (i.e., the
26 Court must ensure that Lynita receives property equal to the full value of
27 the cabin on her side of the ledger at the time of the final property division
28 . . .


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

3 III. CONCLUSION

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

7 Dated this 22 day of August, 2017.

8 THE DICKERSON KARACSONYI
9 LAW GROUP

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CERTIFICATE OF SERVICE

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

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

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

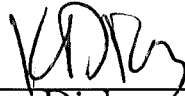
☐ [] pursuant to EDCR 7.26, to be sent via **facsimile**, by duly executed consent for service by electronic means;

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

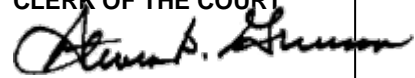
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Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001*

DISTRICT COURT
COUNTY OF CLARK, NEVADA

ERIC L. NELSON,

Plaintiff

Case No.: D411537
Dept.: O

vs.

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

Defendants.

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

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

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

/ / /

/ / /

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

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

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

DATED this 29th day of August, 2017.

SOLOMON DWIGGINS & FREER, LTD.

By: /s/ Jeffrey P. Luszeck

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. BRIEF INTRODUCTION**

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

12 **II. LEGAL ARGUMENT**

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

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

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

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

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

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

23 ³ *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 **III. CONCLUSION**

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

13 DATED this 29th day of August, 2017.

14 SOLOMON DWIGGINS & FREER, LTD.

15 By: /s/ Jeffrey P. Luszeck

16 MARK A. SOLOMON, ESQ.

17 Nevada State Bar No. 0418

18 JEFFREY P. LUSZECK, ESQ.

19 Nevada State Bar No. 9619

20 9060 West Cheyenne Avenue

21 Las Vegas, Nevada 89129

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

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

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TRUST AND ESTATE ATTORNEYS



CERTIFICATE OF SERVICE

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

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

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An Employee of SOLOMON DWIGGINS & FREER, LTD.

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TRANS

ORIGINAL

FILED

JUN 15 2018

Sharon L. Williams
CLERK OF COURT

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

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

BEFORE THE HONORABLE FRANK P. SULLIVAN
DISTRICT COURT JUDGE

TRANSCRIPT RE: STATUS CHECK

WEDNESDAY, JANUARY 31, 2018

1 APPEARANCES:

2 The Plaintiff:
3 For the Plaintiff:

ERIC L. NELSON
RHONDA FORSBERG, ESQ.
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5 The Defendant:
6 For the Defendant:

LYNITA NELSON
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Las Vegas, Nevada 89134
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8 The Trustee:
9 For the Trustee:

MATT KLABACKA
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9060 W. Cheyenne Ave.
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2 P R O C E E D I N G S

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

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

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

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

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

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

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

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

24 THE COURT: Thank you.

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

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

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

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

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

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

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

24 I have read the oppositions to those requests as

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 MR. KARACSONYI: Yes.

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

24 I know you requested some offsets for the

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

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

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

16 THE DEFENDANT: No. More than that.

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

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

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

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

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

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

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

24 The issue, too, we also talked about mediation

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

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

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

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

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

4 THE COURT: Anything --

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

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

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

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

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

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

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

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

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

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

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

6 THE COURT: Okay.

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

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

13 MR. LUSZECK: Okay. Understood.

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

18 MR. LUSZECK: Well, that --

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

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

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

6 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

7 THE COURT: Okay.

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

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

12 MR. LUSZECK: Yeah, the divorce decree.

13 THE COURT: Okay.

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

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

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

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

1 it all there.

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

3 MR. LUSZECK: Okay.

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

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

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

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

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

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

3 MR. LUSZECK: Correct. Correct.

4 THE COURT: Okay.

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

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

11 THE COURT: We had a --

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

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

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

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

17 MR. LUSZECK: Exactly.

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

21 MR. LUSZECK: Correct.

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

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

1 - it was a whole separate order.

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

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

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

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

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

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

12 THE COURT: Yeah.

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

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

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

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

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

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

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

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

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

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

7 MR. KARACSONYI: Yeah. Okay.

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

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

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

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

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

20 THE DEFENDANT: Just a sample.

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

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

1 MR. LUSZECK: Well --

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

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

6 THE COURT: But I'm --

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

9 MR. KARACSONYI: Rather than filing it.

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

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

13 MR. LUSZECK: -- photograph by --

14 MR. KARACSONYI: No.

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

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

17 MR. LUSZECK: Oh, you go.

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

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

1 record, they're not going to be taken up, and that's a
2 concern.

3 MR. KARACSONYI: For later use for the Court for the
4 (indiscernible) issue.

5 THE COURT: I can -- certainly I would not accept
6 this in evidence at this time. If it becomes an evidentiary
7 issue again, my issue I was looking at it -- yeah, I was
8 looking at that as a waste argument, you know, the saying that
9 she wasted the money or the apartment on that, and I wasn't
10 inclined to get that because she was the manager and I figured
11 people have the business judgment rule where they make
12 decisions, good or bad, and the Court's not to secondguess
13 unless they thought there's some type of fraud or corruption
14 in there. So I wasn't inclined to get into that. But if it's
15 raised by the parties thinking there were, of course, I would
16 then have to get that admitted as an evidentiary.

17 But right now, the Court will accept it, but not --
18 I will keep it on the side in the confidential file, but won't
19 make it part of the record unless we come up to that issue.
20 That way we'll have it if it comes out to be disputed.

21 MR. KARACSONYI: Yeah, and you're -- you're not
22 making any rulings on it anyhow right now, so it won't come up
23 until that time, but we can't file color photographs so we
24 wanted to provide Your Honor a copy.

1 MR. LUSZECK: Yeah. And we're not stipulating to
2 the authentic -- anything like that.

3 MR. KARACSONYI: No.

4 MR. LUSZECK: We're not waiving --

5 MS. FORSBERG: Not waiving any of that.

6 MR. KARACSONYI: No.

7 MR. LUSZECK: -- any of that.

8 THE COURT: I will not admit it as an evidentiary at
9 this point.

10 MR. KARACSONYI: It's for the file, color
11 photographs for Your Honor.

12 MR. LUSZECK: I understand.

13 MR. KARACSONYI: So to -- as back up.

14 THE COURT: Well, no, we'll not accept it as
15 evidence as we need a foundation and all that, so we'll just
16 take it as a courtesy copy to the Court to see if it becomes
17 an issue, then we can argue the evidentiary and get the
18 foundation necessary to have it admitted.

19 MR. KARACSONYI: Yes.

20 THE DEFENDANT: And it's just a sampling as well.
21 It's not everything.

22 THE COURT: Not inclusive, okay.

23 MR. KARACSONYI: Okay. So Friday, the 9th then,
24 we'll have the rest of the general ledger and that's been

1 stipulated to.

2 With regard to the transfer back of Lindell and
3 Banone, and the payment of monies. First, let me -- let me
4 address the request for payment of funds and kind of make a
5 dist -- a distinction between where we were in 2013 and where
6 we are today.

7 In 2013, when you ordered the transfer of properties
8 and you ordered the payment of funds, to Ms. Nelson, you did
9 so because you had at that point a final judgment. We sit
10 here today without a final judgment. So we're in a far
11 different position today than we were in 2013 and that's why
12 the amount of work and the amount of -- the amount of
13 evidentiary proceedings and money that would be involved in
14 trying to figure out because they say that she owes 500,000,
15 we believe that they owe her 265,000, and I'll get to that in
16 a minute.

17 That type of effort wouldn't make sense at this
18 point because you don't have a final judgment. Now, if you
19 ruled at final judgment in their -- in their favor, then they
20 would be in the same position she was in in 2013 and the
21 analysis would be different. But that is really the
22 distinction, I think, that -- that supports Your Honor's
23 ruling that we're not going to get into determining at this
24 point whether or not the money should be transferred back.

1 With respect to returning the Lindell and Banone
2 properties, obviously we're concerned. One, we're concerned
3 because Ms. Nelson is in a very poor financial condition right
4 now and she's going to be forced into a situation where she's
5 going to have to start liquidating her other property and --
6 and just further depleting her estate. She has no money to --
7 to live off of at the present time without those properties.

8 Obviously, she's going to have to receive half the
9 rent because Lindell is half hers, even without a tracing.
10 And so, we would have to do that. And she's owed -- she put
11 265,000 of her own money into the -- to the properties.

12 Here's the other issue and it -- and this is really
13 important. We had a request to reinstate or to just reaffirm
14 the JPI. You -- this Court and the courts sitting in divorce
15 actions, are required to maintain some status quo during the
16 pendency of the matter. And if you have a transfer of
17 property back to them without any JPI in place that look,
18 you're not going to encumber, sell, dispose of any of this
19 property, you're putting at risk any final judgment that you
20 may ultimately enter.

21 I mean, it's vitally important that no matter what
22 you do, that you put in place a JPI to protect the parties.
23 And this protects both parties, because we don't know how it
24 will turn out, to protect both parties to ensure that your

1 final judgment can be enforced. So we'd ask --

2 THE COURT: When I transferred that initially I put
3 that into it to make sure to protect --

4 MR. KARACSONYI: You did.

5 THE COURT: -- her interest so they couldn't be sold
6 or otherwise encumbered without a court order if I remember.

7 MR. KARACSONYI: That's absolutely true. You -- you
8 actually put a freeze on -- you put a freeze on a couple
9 things.

10 You put a freeze on everything that was transferred
11 to her that she couldn't get rid of it without your approval
12 and you also put a freeze on anything that was awarded to her,
13 and I believe that included the Russell Road property that
14 they couldn't get rid of that. So -- without your approval.

15 So that's the issue. So we need to, at least to the
16 extent that -- I mean, at the very least, and I think is a
17 minimum, put a -- put -- you -- put the JPI over everything
18 that was awarded to her so you at least know that you got half
19 if everything turns out to be community property. But I think
20 really, putting a JPI in place for all property that's subject
21 to a claim of community interest, and right now that's
22 everything, putting a JPI in place, and it's not -- it's not
23 that burdensome.

24 I mean, if they tell you well, that's really

1 burdensome. They brought that up about the receiver, but all
2 you're saying is look, in order to sell or transfer anything
3 at this point, you can do business as usual, but you need to
4 come to me so that we know, so that we don't have an issue
5 that you bought or sold or -- or did anything, without court
6 approval or agreement of the parties. And that's really for
7 everyone's protection. It's not that burdensome. And it
8 makes sure that you can keep a tab on everything in existence
9 during the pendency of the case.

10 Now, as to the tracing. We agree with -- with you
11 that the tracing needs to start in 1993. The relevant -- the
12 really relevant finding that -- that you quoted and that he
13 quoted, Mr. Luszeck, was on page 6. "On June 3rd, 2013,"
14 under -- I underlined this -- "the District Court found that
15 the separate property agreement was valid and the parties'
16 self settle spendthrift trusts were validly established and
17 funded with separate property."

18 The Supreme Court, if you -- Your Honor knows that
19 you weren't -- you obviously didn't do a tracing back to 1993.
20 The Supreme Court was relying on your statement in the decree
21 that the properties from the 1993 revocable trust were
22 transferred to the 2001 trust and was just simply referring to
23 that to find that the -- the properties from one trust were
24 transferred to another. The District -- the Supreme Court

1 didn't perform a tracing. The Supreme Court wasn't making
2 additional factual findings or meaning to make additional
3 factual findings separate and distinct from what Your Honor
4 made. And if Your Honor did not trace and find that 1993
5 property made it all the way through to 2001 in the initial
6 decree, the Supreme Court certainly wasn't contradicting its
7 own order, its own holding, by doing that.

8 It's -- essentially they want you to read the
9 Supreme Court as having made findi -- having contradicted
10 themselves in their own decision, that you need to perform a
11 tracing to see if community property exists, but with respect
12 to anything before 2001, no tracing is necessary. Well, that
13 would be contrary to exactly what the Supreme Court said that
14 you need to determine whether or not there's any community
15 property in these trusts, and the Supreme Court was clear on
16 that.

17 In a divorce involving trust assets, the District
18 Court must trust those trust -- trace those trust assets to
19 determine whether any community property exists within the
20 trust. And that was page 15.

21 THE COURT: Page 15 and again --

22 MR. KARACSONYI: Yeah.

23 THE COURT: -- it comes up on page 16, about without
24 proper --

1 MR. KARACSONYI: And to -- yeah.

2 THE COURT: Without proper tracing, this Court is
3 left with only the parties' testimony regarding the
4 characterization of property which carries no weight.

5 MR. KARACSONYI: Yeah. The parties' inconsistent
6 testimony, on page 18, having concluded the District Court had
7 subject matter jurisdiction, and the written instruments at
8 issue are valid, and the District Court must trace assets to
9 determine whether any community property exists within the
10 trusts.

11 So that's the argument we made the first time and
12 that's the argument we make again. It's interesting because
13 in their -- in their brief, the things they focus on as to why
14 the Supreme Court all of a sudden found that there was
15 sufficient tracing all the way back to 1993 to conclude that
16 everything in 2001 was separate property, was that the -- that
17 the trust agreements themselves state that they should be
18 separate property, which the Supreme Court said statements by
19 the parties have no value, that Shelley Newell, the bookkeeper
20 testified. You didn't even make any findings regarding her
21 testimony, I believe. And that -- and that -- and those were
22 really the two reasons.

23 And then section 12.13 of the ELN Trust and LSN
24 Trust provide that any property held in trust shall be the

1 separate property of the beneficiaries of such trust, which
2 talks about distribution.

3 So, I don't think that the -- the arguments -- the -
4 - the reasons that they enumerated in their -- in their brief
5 are -- are persuasive. And so we bel -- we believe that
6 you've made the right decision with respect to the tracing and
7 apparently they're going to take it up to the Supreme Court
8 and we'll go back for round, you know, the third or fourth
9 time and writs and appeals and we'll argue about that there,
10 if it's appropriate for writ relief, which I'm not sure it is.

11 But the other issue is you brought up gifts and the
12 finding of a gift. I -- I -- in -- as part of this tracing
13 and analysis, I -- I believe you have to determine if there
14 were gifts and not or if those were gifts or not gifts, if
15 they were intended to be gifts, just as you in any -- any --
16 any -- any divorce case. You often have, for example, people
17 buy a house and one of them signs a quit claim deed to it
18 because they can't borrow and the other one needs to be the
19 sole party on it, and you have to determine whether or not
20 that was meant to be a transmutation of property a gift or
21 whether or not that was just a -- a matter of convenience. I
22 believe you have sufficient testimony from before to show that
23 there was no gift intent certainly because of the fact that
24 the -- the -- the testimony was that he was telling her that

1 this was all being done for the benefit of the community and
2 she certainly wasn't giving away the property. But I believe
3 you could do that as part of the analysis, assuming there's
4 even a tracing possible, because if -- if you can't trace back
5 to 1993, everything acquired after 1993 is presumed to be
6 community property and it should all be equally divided.

7 So those are our positions on -- on those issues.

8 With regard to the sale of Brianhead, you have
9 jurisdiction over the parties and their property, you -- the
10 Court's already ruled you had subject matter jurisdiction.
11 You can make -- you can make orders regarding the parties'
12 property. We believe that the sale of Brianhead is not only
13 the correct -- correct order, but it's also necessary.
14 Because of the financial situation Ms. Nelson finds herself
15 in, she absolutely needs that property sold.

16 We would ask that if there is an appraisal, that Mr.
17 Bertsch select the appraiser and -- and select an appraiser
18 for the parties. That way we can avoid any disputes between
19 the parties over appraisers.

20 We'd also ask that you, you know, that any buyout be
21 kind of without prejudice because, you know, he may be buying
22 her out with what you determine to be community property and
23 she shouldn't be paying herself for the property, so that if
24 he buys her out, that that obviously doesn't mean that that

1 property he's used to buy her out is separate property, but
2 that it'll just -- you'll -- you'll work it out in a balance
3 sheet later.

4 I would also remind the Court that she does own half
5 of Lindell and you have jurisdiction over that. And so,
6 certainly, you have jurisdiction over her and the property of
7 the LSN Trust. And certainly, if there's an issue later that
8 requires reimbursement, you have sufficient property at issue
9 to work it out in some kind of property division or sale.

10 THE COURT: Thank you. Counsel?

11 MS. FORSBERG: Your Honor, let's attack a couple of
12 issues first. Let's start with the Brianhead property.

13 And what Mr. Karacsonyi -- we kind of agree with. I
14 think maybe it's been lost on the Court that Mr. Bertsch is
15 who ordered the appraisal to begin with on Brianhead, so it
16 just needs to be updated. We agree that Mr. Bertsch should --
17 we'd ask the Court to task him with doing that and that that's
18 -- but we also do disagree with the value going in -- up,
19 because I know the Court probably heard the fire, that the
20 fire destroyed the whole thing, so it -- they'll determine
21 that, but clearly, I think that's where the difference is.
22 And then there was deferred maintenance on that property that
23 hasn't been done since this all began that --

24 THE COURT: I think it's at thirty --

1 MS. FORSBERG: -- but the appraisal will deal with
2 that.

3 THE COURT: I think they're asking 30-grand I think
4 as an offset for -- if I'm remembering in someone's motion on
5 that, about 30-grand for maintenance or a side -- again, that
6 may be updated, but --

7 MS. FORSBERG: There's still a lot more. But we're
8 just saying that that -- that we agree that Mr. Bertsch should
9 be tasked with that, but we already had an appraisal. It
10 seems like it'd be reasonable for them just to have it updated
11 and Mr. Bertsch can order -- Mr. Bertsch is the one who
12 ordered the appraisal to begin with for the Court. So I don't
13 know if that's been lost on everybody, but I think having him
14 do it, we agree with Mr. Karacsonyi that he should just have
15 it updated and -- and go from that perspective. And then give
16 that -- and then it would give Mr. Nelson an opportunity to
17 buy out her interest.

18 But, you know, clearly, the problem that I think
19 both -- that we're having -- Mr. Nelson is having with this is
20 it sounds like what they're asking for is that the Court asked
21 ELN Trust to do all these things and Mr. Nelson to do all
22 these things and said no, you're going to do it now, even if
23 things are still up in the air because you knew it was going
24 to the Supreme Court and stuff, but they don't want to do the

1 same back. That doesn't seem amicable or fair and equitable
2 with this Court. So I think that's where the thing is.

3 So if there's going to end up being a buyout, that
4 also -- any money to her needs to be held. That's what you've
5 said before; look, we need to hold the money and you're hol --
6 making him hold -- ELN Trust hold all that 500-and-some-odd-
7 thousand according to their numbers, if -- it needs to be
8 equitable. It can't just be well, we give her what she wants
9 and not -- if it's exact same issue, which this is the exact
10 same issue, it's the same property that was -- may go one
11 should come the other, and I think this Court recognizes that.

12 As far as the instituting a joint preliminary
13 injunction, that's all that these trusts do is buy and sell
14 property. So when you say they should conduct business as
15 usual, by putting in -- that in place and not allowing them to
16 sell things, that's what they do. So that would be -- it's a
17 severe burden that I think when -- the fact that the Supreme
18 Court has already ruled what needs to go back to the ELN Trust
19 and I don't think we should be encumbering a business running
20 and moving forward. These -- that's how both sides function.
21 So I think that we can't lose sight of that.

22 And of course, rents issues and profits from
23 separate property are separate property, and I'm sure that's
24 part of what it is and so I think those are the two main

1 issues that I have from a Eric Nelson and as Eric Nelson
2 Investment trustee to make, were the two more things. The
3 rest I think Mr. Luszeck made on behalf of the trust, so.

4 THE COURT: Any rebuttal? I'll give it to you since
5 it --

6 MR. LUSZECK: Yes.

7 THE COURT: -- started out as your motion to enforce
8 the order, so.

9 MR. LUSZECK: Yeah, a quick follow-up.

10 With respect to the transfer of properties,
11 Counsel's statement that that didn't happen until after a
12 final judgment, that's not true. The divorce decree was
13 entered in June of 2013, but the judgment wasn't final until
14 the end of 2014 and the property was transferred prior to that
15 time. So this concept that we had a final judgment and that's
16 what distinguishes it from now is -- is not accurate.

17 You know, with respect to the JPI, you know, if this
18 Court's inclined to do that, which the ELN Trust disagrees
19 with, I think it would -- it has to be narrow -- narrowly
20 tailored to the properties at issue; the Lindell, the Banone,
21 I mean, issues that are -- clearly belong to the ELN Trust
22 like Wyoming Downs which she has no interest in pursuant to
23 the Supreme Court. That shouldn't be encumbered by any type
24 of JPI, so I think if this Court's inclined to do that, it

1 needs to be specifically tailored.

2 You know, I -- I disagree with Counsel's
3 characterization of the Supreme Court's statements. I read
4 four statements from the order where it was clear that the
5 Supreme Court had -- the Supreme Court had found that self
6 settled spendthrift trusts were funded with separate property.
7 And as such, the tracing should be limited to that specific
8 time frame.

9 I won't go through those again. I'm in page 2, 4,
10 and 13, irrespective of what this Court -- believe that this
11 Court found on six page -- page 6 of the Supreme Court order.

12 And just in addition to that, I mean, the -- Section
13 12.13, which -- which Counsel referred to in the self settled
14 spendthrift trust, specifically says any property held in
15 trust and any income earned by the trust created hereunder,
16 shall be the separate property in distinction with community
17 property, joint tenancy property, tenancy in common, marital
18 property, quasi-community property or tenancy by the entirety
19 of the beneficiaries of such trust.

20 So this wasn't just a statement that was made by one
21 of the parties as to their belief as to the -- the legal
22 nature of the property, it was a statement that was made in a
23 trust under the advice of counsel regarding the separate
24 property nature of the property. So for that once again, I

1 think the -- the tracing needs to be narrowly tailored for
2 that short time frame.

3 With respect to the sale of Brianhead, once again, I
4 mean, they filed an A case. Last time we were here we
5 discussed, you know, if it needed to happen, it was going to
6 be a partition action. Counsel's position now that this Court
7 has jurisdiction over that issue is really contradictory to
8 the fact that they filed an A case seeking a partition of the
9 -- sorry, a partition of the Brianhead property. So we would
10 -- we would ask that this Court, I guess, defer ruling on that
11 and if they -- if the A case is the proper -- proper forum for
12 that to proceed, it should proceed there as opposed to here.

13 THE COURT: Okay. Mr. Bertsch, do you have any
14 questions or anything what I need to do, I want to look into
15 the argument I had again, laid out what my strategy was at and
16 everything. I want to re-look at everything to see -- the key
17 would be the tracing period, I need to re-look at that, I've
18 heard arguments it should go to '93 and their argument it
19 should be from 2001, so I need to read the Supreme Court
20 decision again because I didn't find it as clear as everyone
21 else seemed to find it and I was kind of looking at those
22 issues to see what they were or not, because they made it
23 clear that the Court did not trace and Court needs to trace on
24 that, so they made it real clear on page 15 through 16 about

1 the tracing, and the issue is how far do we trace back I guess
2 is the key question.

3 I want to read the -- the trust agreements again. I
4 did read the separate property agreements, but was trying to
5 find the trust agreements again to read that because the file
6 was very voluminous, so I need a chance to read that so I want
7 to see exactly what the trust documents said themselves when
8 they were created in 2001 and give a written decision so we
9 can get this moving or if people want to take it up on writs,
10 at least it gives them an order to move up on that. I want to
11 get this going.

12 As far as the last issue, mediation, is there any
13 reason or chance? I know we went around the block several
14 times before we had the case settled, prospectively a couple
15 of times and it didn't pan out on that mediation, is -- if
16 anybody -- if you respect that you think would do mediation on
17 that because you know it's going to happen in this case no
18 matter what we ultimately do, even when we get the tracings,
19 it's probably going to back up to the Supreme Court, can sit
20 there another year or two, and just going on ad infinitum on
21 that, but the same token, the parties have a right to litigate
22 this as much as they want, but I don't know if you've even
23 thought that's worth it or if you had someone in mind you
24 thought that --

1 MR. KARACSONYI: I sent an email to them this
2 morning telling them that our client has decided that based on
3 the fact that we've been to so many mediations previously, the
4 Supreme Court settlement conference, mediations prior to that,
5 and given her financial situation, she just thinks it will be
6 an incredible waste of time and money and we are willing to
7 entertain any written proposal that they -- that they want to
8 make, but I -- we just don't see it as being fruitful and
9 it'll just put her in a more precarious financial situation.

10 MR. LUSZECK: And obviously, I can't make them
11 participate in mediation. We disagree. We think if we have a
12 strong mediator who can hear this case, we could potentially
13 reach a settlement. I mean, I -- I think if we can get in
14 front of a mediator in the next couple months it would be a
15 lot less time consuming and expensive than litigating this
16 over the next, you know, I don't know how long it's going to
17 take. And no -- none of us do.

18 THE COURT: Yes, I -- right.

19 MR. LUSZECK: I mean, it's going to take a while
20 regardless of what this Court's order, it's going to take a
21 while for Mr. Bertsch to do his analysis and then, you know,
22 if issues are taking up with the Supreme Court, so obviously,
23 our preference is mediation or settlement conference with a
24 very strong mediator or settlement conference judge, but, you

1 know, I -- I don't think that we can make Ms. Nelson do that.

2 THE COURT: Mr. Nelson, your position on this or?

3 MS. FORSBERG: I believe -- we agree with Mr.

4 Luszeck. I mean, we can't force her to do it, but, at the

5 same time, is it because she thinks she has access to the

6 money that she doesn't have to give back? I don't know, maybe

7 the Court needs to prompt a little bit. I don't know.

8 THE COURT: I think the real issues on that as I

9 said, and when I had this case, we had a -- I think a 10-day

10 trial and then we thought we had it settled and then started

11 again on that, so I know it has a very -- I'm not inclined to

12 order people to mediation unless they go there willingly,

13 because otherwise, it's not going to get anything done. If

14 you think it will be, I -- just let me know and if you have a

15 specific mediator or settlement judge you want, contact my

16 chambers, you can do a conference call and appoint one if you

17 think it would be beneficial to get it done on that.

18 I'm going to get my order issued within the next 30

19 days so that we get that going. I -- no matter what happens

20 on that, any paperwork you need, Mr. Bertsch, you can start it

21 because we know we're going from at least 2001 currently, so

22 we can get that started while we're waiting for the decision

23 on if we go back to '93. But anything we can get started on

24 that, let me know if you need any documents so that you can

1 get that started on that, because I just don't see it getting
2 resolved and tracing's going to be a key issue and that's
3 going to take a significant amount of time and resources for
4 the parties on that.

5 And as far as the Brianhead, I have no idea what's
6 that worth, but I think you'd probably need a new appraisal
7 instead of just an addendum on that, because things change and
8 it -- if that fire did, you know, damage the surrounding
9 things, I have no idea on that, but you might just should
10 start with a new because I know at the time it was the real
11 estate market was kind of down at that time, so that would be
12 the key on that. Because what that materializes can help you
13 out financially and if it's, you know, millions of dollars,
14 that can help out both sides (indiscernible) on that as far as
15 any of the costs on that, but I want to make sure everybody's
16 protected on those interests in that.

17 So that'd be my think, we'll get a decision for you.
18 Did you want as far as if you want to put it on for a
19 settlement thing, just let me know and we'll set up a phone
20 conference and settlement. I'd like to get Mr. Bertsch maybe
21 get -- at least start going from 2001 and forward.

22 Any special documents you need, Mr. Bertsch? A way
23 to kind of get a jumpstart? I know I went through a lot of
24 your reports that you did and there's so many on that, I was

1 trying to see if I could use that to try to trace it, and I
2 know some of the things you had in your court reports kind of
3 showed where some of the property went to different things,
4 but I don't know -- it's kind of complicated, so I don't know
5 what you need to kind of get started because you might as well
6 kind of get the tracing going unless the parties --

7 MR. BERTSCH: This is additions to the trusts after
8 2001?

9 THE COURT: 1, yeah. Because what happens at this
10 point, and that's at -- to begin. I might go back to '93
11 depending, I need to digest the arguments of counsel today,
12 but from when the trusts were created in 2001. I forget the
13 date that was.

14 Do you know when the trust was in 2001?

15 MR. LUSZECK: May 3rd?

16 MR. KARACSONYI: May 30th?

17 MR. LUSZECK: Yeah.

18 THE COURT: So I would go from June 1st. If it was
19 May, I'd go from June 1st -- June 1st, 2001 up to the divorce
20 decree, which I think was June 2014, was it?

21 MR. KARACSONYI: June 6th, 2013.

22 MR. LUSZECK: Yeah, I believe.

23 THE COURT: So I'd go from June 1st, 2001 through
24 June, what was it?

1 MR. KARACSONYI: 6th, 2013.

2 THE COURT: June 6th, 2013. So basically, June 2001
3 through June 2013 essentially, at least get started whatever
4 paperwork you need. And again, I don't know how you go about
5 that, with all the transfers, I'm not really sure on that
6 because --

7 MR. BERTSCH: They have an accounting of the trust
8 during those periods of time, right?

9 THE COURT: Do we have all the accountings? I don't
10 --

11 MS. FORSBERG: I think they're --

12 MR. KARACSONYI: We've given them everything that --
13 that we've had since the initial case.

14 THE COURT: Okay. I don't know a whole lot of --

15 MR. BERTSCH: I'll have to go through the work
16 papers, there's a lot of them there.

17 THE COURT: Yeah, there's a lot in the -- the
18 problem is there's a lot in the file. The problem is, it's
19 real tough to find it because we've got 9000 screens when you
20 pull that up, so to try to find it unless you know the date,
21 it's real tough to find it because there's so many entries. I
22 mean, literally there's hundreds of screens when you pull up
23 to just to find the separate property agreement it was
24 difficult to find them unless you know when it was to get you

1 that time frame.

2 MR. BERTSCH: Okay.

3 THE COURT: But if they have that and if Counsel can
4 provide that, that's great. If they have those readily
5 available --

6 MS. FORSBERG: We'll get them --

7 THE COURT: -- to try to find them in the record is
8 real difficult because it's so voluminous.

9 MR. KARACSONYI: We'll give him all the accounting
10 records. Can we just stipulate that if you're going to give
11 him something new that hasn't been part of the record --

12 MS. FORSBERG: Record?

13 MR. KARACSONYI: -- that you would let the other
14 side know or at least send us each -- maybe we'll each send --
15 what -- whenever I send him something, I'll put a list and --
16 and maybe reference where it was or the bates numbers, and if
17 they could do the same, that way we can kind of keep track of
18 who sent them what.

19 MS. FORSBERG: So everything in the record.

20 THE COURT: Would that work out? Again, I said the
21 record's so voluminous trying to identify what was --

22 MR. KARACSONYI: To help us both along?

23 MR. LUSZECK: Yeah, that's fine. So any -- any
24 documents that we provide Mr. Bertsch, we just need to apprise

1 the other side and give them copies of the same.

2 MR. KARACSONYI: Yeah, if it's a new disclosure.

3 MS. FORSBERG: Well, they already have -- if it's a
4 new disclosure.

5 MR. KARACSONYI: If it's a new disclosure.

6 MS. FORSBERG: No need to get --

7 MR. LUSZECK: Okay. Okay.

8 MS. FORSBERG: -- new copies if it's -- of those.

9 MR. KARACSONYI: If it's stuff you've already given,
10 I think that if you just write the letter and say I'm giving
11 you -- Mr. Bertsch, I'm sending you --

12 MR. LUSZECK: Understood. Understood.

13 MS. FORSBERG: Exhibit --

14 MR. LUSZECK: I understand.

15 MS. FORSBERG: -- 33.

16 MR. KARACSONYI: And -- yeah, Exhibit 33 bates or --

17 MR. LUSZECK: I understand.

18 MS. FORSBERG: The --

19 MR. KARACSONYI: -- whatever. For disclosure
20 documents.

21 THE COURT: I think we're up to quadruple S at one
22 time, so I'm not sure what the --

23 MR. KARACSONYI: Yeah, I don't know if we have to do
24 exhibits or disclosures.

1 THE COURT: I'd --

2 MR. KARACSONYI: Just something that references that
3 it's already in our file.

4 THE COURT: So you know where it's at so if it goes
5 up on appeal, you've got a record on that because the Court
6 can find it in the record then.

7 MR. KARACSONYI: I just had one question. I'm sure
8 you're already intending on doing this, but whatever decision
9 you make, in the decision we would appreciate certainly if --
10 if you could clarify in there or make clear when you're
11 tracing, what the tracing that occurred in the underlying
12 proceedings was so the Supreme Court knows whether you did
13 find -- if you did find that it was separate property, then
14 fine. If you didn't, if you could just make it clear whatever
15 you're ruling and whatever you had done before, because I know
16 that's going to be an argument above, so --

17 THE COURT: That issue when you said the Supreme
18 Court said I made those findings and make sure I made those
19 findings?

20 MR. KARACSONYI: Yeah. Yeah, and if you can just
21 put in your order, even if you rule against us or you rule in
22 their favor or in our favor, just so that we know that we can
23 make it clear to the Supreme Court this is what you did before
24 and so they know exactly what you did before.

1 MS. FORSBERG: And, Your Honor, I think I -- just to
2 clarify one quick thing so Mr. Bertsch understands. He's just
3 trying to determine, he's not doing a forensic accounting of
4 everything they've had done in the world, he's trying to
5 determine whether there's community properties by clear and
6 convincing evidence is put in there.

7 MR. KARACSONYI: He's trying to figure out the
8 source, I think we all -- he's trying to find the source of
9 all --

10 MS. FORSBERG: I just want to make sure he knows
11 what --

12 MR. KARACSONYI: -- the property.

13 MS. FORSBERG: -- we're asking him to do.

14 MR. KARACSONYI: Trying to see where -- where a
15 property initiated from and it -- whether it came from --

16 THE COURT: Community interest.

17 MR. KARACSONYI: -- this property or that property,
18 basically just tracing back where the property came from is my
19 understanding.

20 MR. LUSZECK: Yeah, I mean, from page 16 to 17 of
21 the Supreme Court order it says the District Court must trace
22 assets to determine whether any community property exists
23 within the trusts.

24 MR. KARACSONYI: Yeah, so --

1 MS. FORSBERG: Yeah, we just want to make sure that

2 --

3 THE COURT: Yeah.

4 MS. FORSBERG: -- he understands his task.

5 MR. KARACSONYI: So my understanding is you just
6 trace it back -- I don't think he's making legal
7 determinations. I think he's just going to provide you a
8 report that this property you can trace back to this, to this,
9 to this, to this, all the way to 2001, and then you can decide
10 at that point the -- the legal aspect of it for --

11 MR. LUSZECK: Yeah.

12 MR. KARACSONYI: -- whether it's community or
13 separate property. Do you both agree?

14 THE COURT: I take it you're trying -- trying to see
15 where the property came from, the Court can determine if it's
16 a community interest or not, to see when it was, how it came,
17 and where it came from. So I think, you know, that's all not
18 a legal determination if it was community property or not.

19 MR. KARACSONYI: That's your determination.

20 MS. FORSBERG: Yes.

21 THE COURT: The Court to make the determination.

22 MR. LUSZECK: In that I guess when -- when you do
23 issue your order, Your Honor, I would just request I think an
24 order for us to seek relief from the -- the Supreme Court, we

1 need to request a stay here.

2 THE COURT: Okay.

3 MR. LUSZECK: So if -- if, you know, depending on
4 the way that this Court rules and the way that we make -- the
5 decision that we make in regards to that, I'd just appreciate
6 it if you would at least address that issue on --

7 THE COURT: And I'll do it for either party that --
8 that any request for a stay is hereby denied from both sides,
9 that way, anybody wants to take up, they can take it up right
10 away. Is that fair enough --

11 MR. LUSZECK: Yeah.

12 MS. FORSBERG: Correct.

13 THE COURT: -- to everybody? And then with respect
14 to I understand that this Court needs 30 days to look at the
15 issues regarding the -- the scope of the tracing, but I'd
16 still request that -- that in the interim that Ms. Lynita be
17 required to execute the quit claim deeds to get the properties
18 at least transferred back to the ELN Trust. We can deal with
19 the accounting issues later, but we would like those quit
20 claim deeds executed within five business days after the
21 hearing, which is really the time frame that you gave the ELN
22 Trust to execute those documents, you know, years ago, Your
23 Honor.

24 MR. BERTSCH: Are you --

1 THE COURT: My -- my inclination is to order those
2 quit claim deeds, but I'll wait on my decision and get that,
3 but just so you know it's coming unless --

4 MR. KARACSONYI: Okay.

5 THE COURT: -- my research changes that, that is my
6 inclination to order those quit claim deeds be transferred
7 back to where we start to where it was on that, then we trace
8 all that, and do it again, because I did the same thing when I
9 told the trust, they said oh, it's going to be a hassle doing
10 all that and I said well, too bad, we can transfer it back
11 depending on the Supreme Court. So that is my inclination.
12 Again, I will want to review the argument and review the
13 paperwork, but that is my inclination just so you know it's
14 coming, unless I change my mind when I research everything,
15 but --

16 MR. KARACSONYI: And you'll address the JPI then at
17 the same time?

18 THE COURT: Absolutely. Absolutely.

19 MR. KARACSONYI: Because those go hand in hand.

20 THE COURT: Absolutely. And I would be issuing a
21 JPI, the same thing I did before on that, making sure it's not
22 encumbered or sold until we get it ultimately resolved, but
23 not make it more narrow so it doesn't hinder the operation of
24 the property that has nothing to do with this matter that's

1 clearly not community property.

2 Mr. Bertsch?

3 MR. BERTSCH: Have we determined who is paying for
4 it and shall there be a retainer to get started?

5 THE COURT: How much would you need as a retainer?
6 What would you normally --

7 MR. BERTSCH: I don't know. I'd like to at least
8 have 5,000 to get started.

9 THE COURT: Okay. Okay. I'll put that in the order
10 on that before you get going on that, we'll make sure. My
11 inclination was to have everybody pay 50/50, but you did raise
12 the issue that you guys had paid about 139,000 in the past, so
13 I'll look at that on that, but I'll put that right in the
14 order, but you'll have the guarantee that you get paid if you
15 want to get started on that with the -- do you need any up-
16 front money to get going for -- you know, out of pocket
17 expenses or --

18 MR. BERTSCH: I'd like to.

19 THE COURT: Okay. Let me --

20 MR. KARACSONYI: Your Honor, he had mentioned -- Mr.
21 Luszeck had said something about -- you had just said
22 something about property that was clearly not. I thought all
23 the property's at issue.

24 THE COURT: Well, I mean, separate property for --

1 MR. KARACSONYI: You haven't made a determination.

2 THE COURT: The separate property from 1993 if we
3 decide --

4 MR. KARACSONYI: Oh, yeah.

5 THE COURT: -- yeah, and if we decide --

6 MR. KARACSONYI: Oh, yeah. If something still
7 existed from 1993?

8 THE COURT: Yeah, and if my decision --

9 MR. KARACSONYI: That you hadn't traced?

10 THE COURT: -- says we go from 2001, then I'm going
11 to consider everything from 2001 prior to be separate property
12 based on the separate property agreement in the trust --

13 MR. KARACSONYI: Okay.

14 THE COURT: -- if that's where we go.

15 MR. KARACSONYI: I see what you're saying.

16 MR. LUSZECK: And it's our position of why -- I
17 mean, that's clearly not an issue, Your Honor. That --

18 MR. KARACSONYI: Well --

19 MR. LUSZECK: -- the appeal on that issue was
20 denied.

21 MR. KARACSONYI: No, the -- that's not true. They
22 didn't exclude Wyoming from the tracing.

23 MR. LUSZECK: They sure did. They upheld that
24 order.

1 MR. KARACSONYI: They --

2 THE COURT: I'd have to look at that. I know we did
3 it as a separate order, so I need to look at my order what we
4 did. I know I made specific findings and I don't know what
5 the Supreme Court -- like I said, if it had merits, I don't
6 know if that include Brianhead -- I mean the Wyoming Downs --

7 MR. LUSZECK: Of course it did.

8 MR. KARACSONYI: Well, it didn't say that the -- you
9 can do a tracing except Wyoming Downs. It didn't say that. I
10 mean, it just doesn't say that. You could read it.

11 THE COURT: I'll check and look at that.

12 MR. LUSZECK: Yeah, that's --

13 MR. BERTSCH: Now, did they -- I would like to have
14 the tax returns going back to that. I suppose it was a
15 grantor trust they put on their tax returns.

16 MR. KARACSONYI: I think we have those as part of
17 the discovery. I think he's going to get most of that.

18 THE COURT: Okay. We'll see what we can get going
19 to get started. I'll guarantee the decision within 30 days.
20 I'll try to get it sooner if I can because I know it's going.
21 My issue is I have a huge juvenile calendar and being the lead
22 judge for that, I'm on all these statewide committees and on
23 national committees, so trying to -- I'm always either in
24 court or at a meeting, but I want to get this done because

1 it's important. And again, if you guys think that mediation
2 or settlement is a -- and everybody agrees, just let me know,
3 we'll do a joint phone conference to save you the time on that
4 and see if there's somebody you think that might be able to
5 help you get it resolved, because it's going to be costly and
6 time consuming with the way we're going, no matter what the
7 Court's decision is.

8 Mr. Bertsch?

9 MR. BERTSCH: The appraisal on the Brianhead
10 property, should I wait until the order is signed before I do
11 anything with that?

12 THE COURT: Do you guys want to get that started or
13 --

14 MR. KARACSONYI: I'd prefer to get it started. We
15 don't have any signifi -- any -- any really funds to -- until
16 we get that sold or taken care of.

17 MR. BERTSCH: And who should I have them contact to
18 get into the property?

19 THE DEFENDANT: The weather may not allow them in.

20 MR. KARACSONYI: Okay.

21 THE DEFENDANT: But that may be a consideration as
22 well.

23 THE COURT: So the point of contact would be the
24 Lynita fund could -- or both on that?

1 MR. KARACSONYI: Yeah, we're fine.

2 MR. LUSZECK: I almost think --

3 THE COURT: 50/50, so who's the --

4 MR. LUSZECK: I think it's almost part and parcel,
5 Your Honor. I mean, we've got an issue where we have an A
6 case that they've filed a partition action, so I think this
7 Court needs to make a determination as to who has jurisdiction
8 and authority to make a ruling.

9 THE COURT: Well, I would think I do under community
10 -- another thing we had, I think I put it specifically in my
11 divorce decree, that the other party had a right -- right of
12 first refusal and I think I even said on the record that if we
13 get to that point because the parties are 50/50, it's not
14 tenable, it's not going to work out on that, with the nature
15 of this litigation that'd be my inclination to sell it and
16 give the other party right of first refusal and I put that I
17 believe right in the divorce decree if I remember correctly.
18 But I'll check that, but it'd be my inclination and then they
19 can do an emergency motion in front of the A court and so you
20 know it's coming to see if you want to stop me from doing it,
21 but that would be my inclination.

22 MS. FORSBERG: We're getting an updated or new
23 through Mr. Bertsch? I'm a little confused on what we're
24 doing on that, on the appraisal then.

1 MR. KARACSONYI: He's getting a new appraisal he
2 said.

3 MS. FORSBERG: Okay. I mean, I -- I mean, an
4 updated appraisal is a new appraisal. They've got to go out
5 and redo and start over, but whoever he chose -- Mr. Bertsch
6 chose him before, so I assume he'll use --

7 MR. KARACSONYI: He's going to pick somebody.

8 MR. BERTSCH: See if they're still in business.

9 MS. FORSBERG: If they're still in business, right.

10 THE COURT: If they're still in business or someone
11 else.

12 MS. FORSBERG: Right. Oh no.

13 MR. BERTSCH: They've got to be paid.

14 THE COURT: Absolutely. So we'll get all that and
15 get some ideas on that, I'll get that order to you right away.

16 MR. KARACSONYI: We would -- we would prefer not
17 using the same one just because you thought it was low and we
18 just want somebody with a fresh start.

19 THE COURT: Probably get someone new that you've got
20 experience with on so just that no one comes in with a
21 preconceived idea. Again, I just said it was low. That was
22 purely --

23 MS. FORSBERG: Yeah, I --

24 THE COURT: -- speculative,

1 MR. LUSZECK: I thought Mr. Bertsch was making this
2 decision and now --

3 MS. FORSBERG: I thought he was. Now we're --

4 MR. LUSZECK: -- they're making the decision.

5 MS. FORSBERG: -- they're trying to make the
6 decision --

7 THE COURT: Well --

8 MS. FORSBERG: -- instead of allowing Mr. Bertsch to
9 -- if he used that guy last time --

10 THE COURT: -- I don't know like he said that --

11 MS. FORSBERG: -- they chose -- he chose them.

12 THE COURT: -- if that -- if that prior appraiser's
13 still in business or things or other one's you've dealt with
14 that you're comfortable with. I just want to try to avoid
15 anyone saying that there's been any (indiscernible) to try
16 this since it's so litigated on this point, I'm trying to
17 avoid that. If it's a new appraiser you're comfortable with
18 that might be preferable just simply because they can stop
19 saying that they had a preconceived idea --

20 MS. FORSBERG: Your Honor --

21 THE COURT: -- or this or that, so it --

22 MS. FORSBERG: If I could --

23 THE COURT: -- just makes it cleaner if they can,
24 but.

1 MS. FORSBERG: If I can bring a point up. I mean,
2 Mr. Bertsch might be really limited. Brianhead and Duck Creek
3 are very small communities on who would be willing to do it
4 and I think that was what they ran into before, so --

5 THE COURT: Okay.

6 MS. FORSBERG: -- I don't think it's going to be an
7 issue for either one.

8 THE COURT: Yeah, I'll leave it to Mr. Bertsch.

9 MS. FORSBERG: Leave it to Mr. Bertsch to --

10 THE COURT: I respect him and I think both parties
11 respect that.

12 MS. FORSBERG: -- he can use the same guy, fine, and
13 if he can't --

14 THE COURT: And we'll get an order to you then and
15 see about emergency funding to get you started on that with a
16 retainer agreement and any fees for appraisal and stuff so
17 we'll get you some costs and a retainer.

18 MR. BERTSCH: The appraiser's going to ask who's
19 going to pay me.

20 MS. FORSBERG: Right.

21 THE COURT: Yeah, okay.

22 MR. BERTSCH: I'll tell you that right up-front.

23 THE COURT: Okay.

24 MR. BERTSCH: On the agreement.

1 MR. KARACSONYI: The appraisal's not going to be
2 that expensive. I think we can split that. I think it's --
3 what is it, \$500?

4 MR. LUSZECK: Yeah, we're -- although, we -- we --
5 there's \$139,000 disparity of what the ELN Trust has had to
6 pay as opposed to the LSN Trust, so I think until we -- we hit
7 that benchmark, I think everything needs to be borne by Ms.
8 Nelson.

9 THE COURT: I need to see about the -- I don't know
10 the financing --

11 MR. KARACSONYI: All the money that's been paid is
12 still subject to a community claim, though.

13 THE COURT: And then I think --

14 MR. LUSZECK: Well, until that's determined --

15 THE COURT: -- just -- I think the Supreme Court
16 still had the thing about the alimony was sustained and the
17 back child support and those things on that. I don't know
18 where we're at about that. Unfortunately --

19 MR. KARACSONYI: Yeah, and we're going to try that,
20 too, now obviously.

21 THE COURT: -- I can't make -- I can't make the
22 trust pay of course that -- the Supreme Court made it clear I
23 can't make the Trust pay spousal support or alimony unless
24 there was an order in place before and then they did the trust

1 to try to block it, and they said that specifically in the
2 legislative history, and Nevada wants people to come to Nevada
3 and put their money in expensive trusts and --

4 MR. KARACSONYI: Understand that.

5 THE COURT: So I mean, that's the issue on that, so
6 I don't know -- you can file a motion on that to get --

7 MR. KARACSONYI: We're going to be seeking a
8 charging order, Your Honor.

9 THE COURT: And see if they can get something like
10 that and that might help resolve some of the funding on that.

11 Mr. Nel -- Mr. Bertsch, why don't you just put a
12 hold on that. They can give you some of the documents, why
13 don't you put a hold on everything until I make an order on
14 the payment and that way you'll do it and we'll get that all
15 done for you. That way you're not out of any pocket or
16 expenses and -- and if we need to wait a couple weeks, I'll
17 try to get that order in a couple weeks. I just need to look
18 and digest because I don't remember all this stuff to make
19 sure. While I respect all the attorneys here, it's legal
20 argument and not facts. I need to look at that and see what's
21 fair and just to try to get the ball rolling again, because
22 it's going to be very costly.

23 So if you guys would start getting together the
24 paperwork for Mr. Bertsch, but we can hold off taking any

1 action until you get your retainer in pocket and any fees out
2 of that so you -- I don't want you spinning your wheels. Or I
3 should say maybe spinning your wheel under the circumstances,
4 but --

5 (Laughter)

6 THE COURT: All right. I won't pick on Mr. Bertsch.
7 That was just silly.

8 MR. LUSZECK: Thank you, Your Honor.

9 MS. FORSBERG: Thank you.

10 MR. KARACSONYI: Thank you.

11 THE COURT: Thank you to everybody for coming today.
12 It's good to see you, Mr. Bertsch.

13 (PROCEEDINGS CONCLUDED AT 12:28:30)

14 * * * * *

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

18

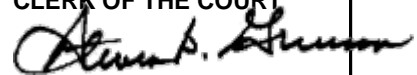
19 /s/ Kimberly C. McCright
20 Kimberly C. McCright, CET

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

ERIC L. NELSON,

Plaintiff,

v.

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

Defendants.

Case No.: D-09-411537-D

Dept. No.: O

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

Cross-claimant,

v.

LYNITA SUE NELSON,

Cross-defendant.

DECISION

This matter was before the Court on January 31, 2018, pursuant to Plaintiff's Motion to Enforce Supreme Court's Order Dated May 25, 2017; Motion to Hold Lynita S. Nelson in Contempt for Violation of September 22, 2014 Order; and for Attorneys' Fees and Costs. The Court, having reviewed all

1
2 Motions, Oppositions, Countermotions, and Replies filed in this matter between
3 July 10, 2017 and August 22, 2017, and having heard arguments of counsel,
4 based thereon and good cause appearing therefor:
5

6 **CONCLUSIONS OF LAW**

7 On May 25, 2017, the Nevada Supreme Court filed an Order which
8 affirmed in part and vacated in part this Court's June 3, 2013 Divorce Decree, and
9 remanded the matter back to this Court. On July 10, 2017, the Plaintiff, Eric
10 Nelson ("Mr. Nelson") filed a Motion to compel the Defendants, Lynita Nelson
11 ("Ms. Nelson") and Matt Klabacka ("ELN Trustee"), to follow the Supreme
12 Court's Order. Several Oppositions, Countermotions, and Replies were filed by
13 all parties prior to a hearing before this Court on January 31, 2018, to address all
14 pending matters, the most important being the interpretation of the Nevada
15 Supreme Court's Opinion with regard to the tracing of property within the trusts.
16
17
18

19 **A. The Tracing of Property Contained Within the Eric L. Nelson Nevada Trust**
20 **and the Lynita S. Nelson Nevada Trust**

21 In its May 25 Order, the Nevada Supreme Court concluded that this Court
22 erred by "not tracing the assets contained within the trusts, either through a
23 reliable expert or other available means."¹ The Nevada Supreme Court also held
24 that both the Eric L. Nelson Nevada Trust ("ELN Trust") and the Lynita S.
25
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27

28

¹ Klabacka v. Nelson, 394 P.3d 940, 948 (Nev. 2017).

1
2 Nelson Nevada Trust ("LSN Trust") "are valid and the trusts were funded with
3 separate property stemming from a valid separate property agreement."²
4

5 In accordance with the Nevada Supreme Court's decision, this Court must
6 Order the tracing of property in both the trusts. In order for an accurate
7 accounting of the property in both the ELN and LSN Trusts to occur, this Court
8 must determine the correct date to commence tracing of the property in the trusts.
9
10 The Nevada Supreme Court held that both the ELN and LSN Trusts were funded
11 with separate property stemming from the 1993 Separate Property Agreement.³
12 As such, the proper date to begin the tracing would be May 30, 2001, the date
13 both the ELN and LSN Trusts were executed.
14

15 The Nevada Supreme Court concluded that the assets in the trusts need to
16 be traced through a reliable expert.⁴ In order for the trusts to be properly traced,
17 this Court shall appoint Larry L. Bertsch, CPA ("Mr. Bertsch") to perform the
18 tracing. In the interest of fairness in regards to payment, both parties will be
19 required to split the cost of Mr. Bertsch's tracing, beginning with a \$5,000
20 payment from each party for Mr. Bertsch's initial retainer. The initial retainer
21 payment to Mr. Bertsch shall be paid within thirty days of the date of this Order.
22
23

24 B. The Lindell Property and Banone, LLC Properties
25
26

27 ² *Klabacka*, 394 at 947.

28 ³ *Id.*

⁴ *Id.* at 948

1
2 In its May 25 Order, the Nevada Supreme Court vacated the Constructive
3 Trust held over the Lindell Property.⁵ The Nevada Supreme Court also held that
4 “the issue of unjust enrichment was not tried by implied consent and, therefore,
5 [this Court] erred in considering it when fashioning its remedies.”⁶
6

7 As the Nevada Supreme Court vacated the Constructive Trust held over the
8 Lindell Property, the LSN Trust must transfer its 50% interest in the Lindell
9 Property to the ELN Trust via Quitclaim Deed. Additionally, the LSN Trust shall
10 provide to the ELN Trust copies of any and all tenant leases for the Lindell
11 Property for the period of June 3, 2013 to the present. The LSN Trust shall also
12 provide to the ELN Trust quarterly accountings for the Lindell Property,
13 including any and all supporting documentation, for the period of June 3, 2013 to
14 the present. Supporting documentation is to include records as to gross profits
15 and expenses related thereto, including, but not limited to; general upkeep,
16 management fees, administrative fees/wages, and maintenance fees/wages.
17
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20

21 As the Nevada Supreme Court held that this Court’s finding of unjust
22 enrichment was in error, the LSN Trust must transfer its 100% interest in the
23 Banone, LLC Properties to the ELN Trust via Quitclaim Deed. The LSN Trust
24 shall also provide to the ELN Trust quarterly accountings for the Banone, LLC
25 Properties, including any and all supporting documentation, for the period of
26
27
28

⁵ *Id.* at 953

⁶ *Id.*

1
2 June 3, 2013 to the present. Supporting documentation is to include records as to
3 gross profits and expenses related thereto, including, but not limited to; general
4 upkeep, management fees, administrative fees/wages, and maintenance
5 fees/wages.
6

7 C. Sale of the Brian Head Cabin

8 The ELN and LSN Trusts each own a 50% interest in the Brian Head
9 Cabin ("Cabin") in Utah. Upon the request of Ms. Nelson for funds to pay her
10 litigation costs and other general expenses, this Court shall Order that the Cabin
11 be sold. This Court previously Ordered that "both parties shall have the right of
12 first refusal should either Trust decide to sell its interest in the Brian Head
13 [C]abin."⁷
14
15

16 In order to properly ensure that both parties are receiving the fair market
17 value of the Cabin, Mr. Bertsch will be appointed to conduct the assessment of
18 the property value via a property appraiser of his choosing. To avoid concerns
19 raised as to the objectiveness of the upcoming appraisal, Mr. Bertsch shall select
20 a property appraiser other than the previous property appraiser, if available. In the
21 interest of fairness in regards to payment, both parties will be required to split the
22 cost of the property assessment.
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⁷ Divorce Decree filed June 3, 2013, pg. 46

1
2 Upon receipt of a fair market value price for the Cabin, the ELN Trust is to
3 be given the right of first refusal and allowed to purchase the 50% interest owned
4 by the LSN Trust. In the event that a fair market value price for the Cabin cannot
5 be agreed upon by the parties, the Cabin is to be placed on the open market until
6 a valid offer is received. The ELN Trust will then be allowed to match the price
7 of the valid offer to purchase the 50% interest owned by the LSN Trust.
8
9

10 In the event that the ELN and LSN Trusts cannot agree on the value of a
11 valid offer, a realtor of Mr. Bertsch's choosing shall determine the validity of the
12 offer and conduct the sale of the property accordingly. All fees and costs
13 associated with the sale of the Cabin shall be shared equally between the ELN
14 and LSN Trusts.
15

16 D. \$720,000 in Bank of Nevada Account 7502338705
17

18 In its May 25, 2017 Order, the Nevada Supreme Court found that this Court
19 erred in Ordering the ELN Trust to pay the personal obligations of Mr. Nelson
20 with regard to alimony payments.⁸
21

22 On November 15, 2013, this Court Ordered the ELN Trust to transfer
23 \$1,068,000 to Bank of Nevada Account 7502338705. This account, which was
24 set up as a blocked account to assist in paying Mr. Nelson's personal obligations
25 with regard to alimony and child support, still holds \$720,000. As the Nevada
26
27

28

⁸ Klabacka v. Nelson, 394 P.3d 940, 952 (Nev. 2017).

1
2 Supreme Court held that this Court erred in ordering the ELN Trust to pay Mr.
3 Nelson's personal obligations, and as these funds are still readily available to be
4 dispersed, this Court will Order the \$720,000 to be transferred from the Bank of
5 Nevada blocked account to an account of the ELN Trust's choosing.
6

7 E. All Remaining Financial Issues
8

9 Both the ELN and LSN Trusts have requested numerous financial transfers
10 based on both this Court's June 3, 2013 Divorce Decree, as well as the Nevada
11 Supreme Court's May 25, 2017 Order, including but not limited to: rents
12 allocated from both the Banone, LLC and Lindell Properties; \$324,000 paid to
13 Lynita Nelson from the Bank of Nevada blocked account; a \$6,050 security
14 deposit paid to the LSN Trust by the ELN Trust; payments collected by the LSN
15 Trust pursuant to the Farmouth Circle Note; and \$75,000 paid to the LSN Trust
16 by Banone-AZ, LLC.
17

18
19 However, the Nevada Supreme Court concluded that the matter of tracing
20 needs to occur to make an accurate accounting of property in both trusts.⁹
21

22 Therefore, it is this Court's opinion that before any financial transfers are to take
23 place, the tracing of both trusts must occur to ensure the proper transfers occur.
24

25 This Court has reviewed the assets of both the ELN and LSN Trusts and has
26 determined that there are sufficient assets in both trusts to offset any deficiency
27

28

 ⁹ *Klabacka*, 394 P.3d at 948.

1
2 once a final balance and distribution amount has been determined. Once the
3 tracing is finalized and a final balance sheet is received, this Court will Order the
4 proper funds to be transferred to each party accordingly.
5

6 **ORDER**

7 Based thereon:

8 **IT IS HEREBY ORDERED** that Larry Bertsch, CPA is to trace the
9 property in both the Eric L. Nelson Nevada Trust and the Lynita S. Nelson
10 Nevada Trust beginning from the execution date of May 30, 2001 through the
11 date of the Divorce Decree, June 3, 2013.
12

13 **IT IS FURTHER ORDERED** that the tracing services provided by Larry
14 Bertsch, CPA is to be paid equally by both Eric Nelson and Lynita Nelson,
15 beginning with an initial payment of \$5,000 each. This payment shall be made
16 within thirty days of the date of this Order.
17

18 **IT IS FURTHER ORDERED** that the Lynita S. Nelson Nevada Trust
19 execute Quitclaim Deeds to transfer the Lindell Rd. and Banone, LLC Properties
20 to the Eric L. Nelson Nevada Trust. The transfer of the property shall be
21 completed within thirty days of the date of this Order
22

23 **IT IS FURTHER ORDERED** that Larry Bertsch, CPA is to acquire an
24 appraisal for the Brian Head Utah Cabin from an appraiser of his choosing. Mr.
25 Bertsch is to select an appraiser different from the original appraiser, if different
26
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1
2 appraiser is available. Once received, the Eric L. Nelson Nevada Trust has the
3 right of first refusal on any offer on the property with the ability to purchase the
4 Lynita S. Nelson Nevada Trust's 50% interest.
5


6 **IT IS FURTHER ORDERED** that in the event that the Eric L. Nelson
7 Nevada Trust and the Lynita S. Nelson Nevada Trust cannot agree on a valid
8 offer, Larry Bertsch, CPA, is to retain a realtor to place the property on the open
9 market for a fair market offer. Once the realtor determines that a fair offer has
10 been received, the Eric L. Nelson Nevada Trust has the right of first refusal on
11 any offer on the property with the ability to purchase the Lynita S. Nelson
12 Nevada Trust's 50% interest.
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14

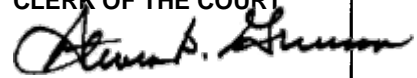
15 **IT IS FURTHER ORDERED** that any appraisal and realtor costs
16 associated with the Brian Head Utah Cabin sale will be paid equally by both Eric
17 L. Nelson Nevada Trust and the Lynita S. Nelson Nevada Trust.
18

19 **IT IS FURTHER ORDERED** that the \$720,000.00 being held in Bank of
20 Nevada Account 7502338705 be released to an account of the Eric L. Nelson
21 Nevada Trust's choosing.
22

23 **IT IS FURTHER ORDERED** that any Stay of Order is hereby **DENIED**.
24

25 DATED this 19th day of April, 2018.
26

27 
28 Honorable Frank P. Sullivan
District Court Judge – Dept. O



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

ERIC L. NELSON,

Plaintiff,

v.

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

Defendants.

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

Cross-claimant,

v.

LYNITA SUE NELSON,

Cross-defendant.

Case No.: D-09-411537-D

Dept. No.: O

NOTICE OF ENTRY OF ORDER

TO:

Rhonda Forsberg, Esq.
E-Service

Robert Dickerson, Esq.
E-Service

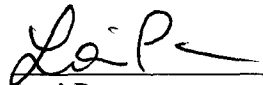
Marc Solomon, Esq.
E-Service

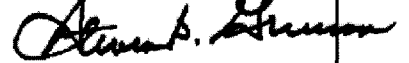
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PLEASE TAKE NOTICE that the DECISION was duly entered in the above-referenced case on the 19th day of April, 2018.

DATED this 19 day of April, 2018.


Lori Parr
Judicial Executive Assistant
Dept. O



DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff,

v.

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

Defendants.

Case No.: D-09-411537-D

Dept. No.: O

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

Cross-claimant,

v.

LYNITA SUE NELSON,

Cross-defendant.

DECISION

This matter was before the Court on January 31, 2018, pursuant to Plaintiff's Motion to Enforce Supreme Court's Order Dated May 25, 2017; Motion to Hold Lynita S. Nelson in Contempt for Violation of September 22, 2014 Order; and for Attorneys' Fees and Costs. The Court, having reviewed all

1
2 Motions, Oppositions, Countermotions, and Replies filed in this matter between
3 July 10, 2017 and August 22, 2017, and having heard arguments of counsel,
4 based thereon and good cause appearing therefor:
5

6 **CONCLUSIONS OF LAW**

7 On May 25, 2017, the Nevada Supreme Court filed an Order which
8 affirmed in part and vacated in part this Court's June 3, 2013 Divorce Decree, and
9 remanded the matter back to this Court. On July 10, 2017, the Plaintiff, Eric
10 Nelson ("Mr. Nelson") filed a Motion to compel the Defendants, Lynita Nelson
11 ("Ms. Nelson") and Matt Klabacka ("ELN Trustee"), to follow the Supreme
12 Court's Order. Several Oppositions, Countermotions, and Replies were filed by
13 all parties prior to a hearing before this Court on January 31, 2018, to address all
14 pending matters, the most important being the interpretation of the Nevada
15 Supreme Court's Opinion with regard to the tracing of property within the trusts.
16
17
18

19 A. The Tracing of Property Contained Within the Eric L. Nelson Nevada Trust
20 and the Lynita S. Nelson Nevada Trust

21 In its May 25 Order, the Nevada Supreme Court concluded that this Court
22 erred by "not tracing the assets contained within the trusts, either through a
23 reliable expert or other available means."¹ The Nevada Supreme Court also held
24 that both the Eric L. Nelson Nevada Trust ("ELN Trust") and the Lynita S.
25
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28

¹ Klabacka v. Nelson, 394 P.3d 940, 948 (Nev. 2017).

1
2 Nelson Nevada Trust ("LSN Trust") "are valid and the trusts were funded with
3 separate property stemming from a valid separate property agreement."²
4

5 In accordance with the Nevada Supreme Court's decision, this Court must
6 Order the tracing of property in both the trusts. In order for an accurate
7 accounting of the property in both the ELN and LSN Trusts to occur, this Court
8 must determine the correct date to commence tracing of the property in the trusts.
9
10 The Nevada Supreme Court held that both the ELN and LSN Trusts were funded
11 with separate property stemming from the 1993 Separate Property Agreement.³
12
13 As such, the proper date to begin the tracing would be May 30, 2001, the date
14 both the ELN and LSN Trusts were executed.

15 The Nevada Supreme Court concluded that the assets in the trusts need to
16 be traced through a reliable expert.⁴ In order for the trusts to be properly traced,
17 this Court shall appoint Larry L. Bertsch, CPA ("Mr. Bertsch") to perform the
18 tracing. In the interest of fairness in regards to payment, both parties will be
19 required to split the cost of Mr. Bertsch's tracing, beginning with a \$5,000
20 payment from each party for Mr. Bertsch's initial retainer. The initial retainer
21 payment to Mr. Bertsch shall be paid within thirty days of the date of this Order.
22
23

24
25 B. The Lindell Property and Banone, LLC Properties
26

27 ² *Klabacka*, 394 at 947.

28 ³ *Id.*

⁴ *Id.* at 948

1
2 In its May 25 Order, the Nevada Supreme Court vacated the Constructive
3 Trust held over the Lindell Property.⁵ The Nevada Supreme Court also held that
4 "the issue of unjust enrichment was not tried by implied consent and, therefore,
5 [this Court] erred in considering it when fashioning its remedies."⁶
6

7 As the Nevada Supreme Court vacated the Constructive Trust held over the
8 Lindell Property, the LSN Trust must transfer its 50% interest in the Lindell
9 Property to the ELN Trust via Quitclaim Deed. Additionally, the LSN Trust shall
10 provide to the ELN Trust copies of any and all tenant leases for the Lindell
11 Property for the period of June 3, 2013 to the present. The LSN Trust shall also
12 provide to the ELN Trust quarterly accountings for the Lindell Property,
13 including any and all supporting documentation, for the period of June 3, 2013 to
14 the present. Supporting documentation is to include records as to gross profits
15 and expenses related thereto, including, but not limited to; general upkeep,
16 management fees, administrative fees/wages, and maintenance fees/wages.
17
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20

21 As the Nevada Supreme Court held that this Court's finding of unjust
22 enrichment was in error, the LSN Trust must transfer its 100% interest in the
23 Banone, LLC Properties to the ELN Trust via Quitclaim Deed. The LSN Trust
24 shall also provide to the ELN Trust quarterly accountings for the Banone, LLC
25 Properties, including any and all supporting documentation, for the period of
26
27
28

⁵ *Id.* at 953

⁶ *Id.*

1
2 June 3, 2013 to the present. Supporting documentation is to include records as to
3 gross profits and expenses related thereto, including, but not limited to; general
4 upkeep, management fees, administrative fees/wages, and maintenance
5 fees/wages.
6

7 C. Sale of the Brian Head Cabin

8 The ELN and LSN Trusts each own a 50% interest in the Brian Head
9 Cabin ("Cabin") in Utah. Upon the request of Ms. Nelson for funds to pay her
10 litigation costs and other general expenses, this Court shall Order that the Cabin
11 be sold. This Court previously Ordered that "both parties shall have the right of
12 first refusal should either Trust decide to sell its interest in the Brian Head
13 [C]abin."⁷
14

15
16 In order to properly ensure that both parties are receiving the fair market
17 value of the Cabin, Mr. Bertsch will be appointed to conduct the assessment of
18 the property value via a property appraiser of his choosing. To avoid concerns
19 raised as to the objectiveness of the upcoming appraisal, Mr. Bertsch shall select
20 a property appraiser other than the previous property appraiser, if available. In the
21 interest of fairness in regards to payment, both parties will be required to split the
22 cost of the property assessment.
23
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⁷ Divorce Decree filed June 3, 2013, pg. 46

1
2 Upon receipt of a fair market value price for the Cabin, the ELN Trust is to
3 be given the right of first refusal and allowed to purchase the 50% interest owned
4 by the LSN Trust. In the event that a fair market value price for the Cabin cannot
5 be agreed upon by the parties, the Cabin is to be placed on the open market until
6 a valid offer is received. The ELN Trust will then be allowed to match the price
7 of the valid offer to purchase the 50% interest owned by the LSN Trust.
8
9

10 In the event that the ELN and LSN Trusts cannot agree on the value of a
11 valid offer, a realtor of Mr. Bertsch's choosing shall determine the validity of the
12 offer and conduct the sale of the property accordingly. All fees and costs
13 associated with the sale of the Cabin shall be shared equally between the ELN
14 and LSN Trusts.
15

16 D. \$720,000 in Bank of Nevada Account 7502338705
17

18 In its May 25, 2017 Order, the Nevada Supreme Court found that this Court
19 erred in Ordering the ELN Trust to pay the personal obligations of Mr. Nelson
20 with regard to alimony payments.⁸
21

22 On November 15, 2013, this Court Ordered the ELN Trust to transfer
23 \$1,068,000 to Bank of Nevada Account 7502338705. This account, which was
24 set up as a blocked account to assist in paying Mr. Nelson's personal obligations
25 with regard to alimony and child support, still holds \$720,000. As the Nevada
26
27

28

⁸ Klabacka v. Nelson, 394 P.3d 940, 952 (Nev. 2017).

1
2 Supreme Court held that this Court erred in ordering the ELN Trust to pay Mr.
3 Nelson's personal obligations, and as these funds are still readily available to be
4 dispersed, this Court will Order the \$720,000 to be transferred from the Bank of
5 Nevada blocked account to an account of the ELN Trust's choosing.
6

7 E. All Remaining Financial Issues
8

9 Both the ELN and LSN Trusts have requested numerous financial transfers
10 based on both this Court's June 3, 2013 Divorce Decree, as well as the Nevada
11 Supreme Court's May 25, 2017 Order, including but not limited to: rents
12 allocated from both the Banone, LLC and Lindell Properties; \$324,000 paid to
13 Lynita Nelson from the Bank of Nevada blocked account; a \$6,050 security
14 deposit paid to the LSN Trust by the ELN Trust; payments collected by the LSN
15 Trust pursuant to the Farmouth Circle Note; and \$75,000 paid to the LSN Trust
16 by Banone-AZ, LLC.
17

18
19 However, the Nevada Supreme Court concluded that the matter of tracing
20 needs to occur to make an accurate accounting of property in both trusts.⁹
21
22 Therefore, it is this Court's opinion that before any financial transfers are to take
23 place, the tracing of both trusts must occur to ensure the proper transfers occur.
24
25 This Court has reviewed the assets of both the ELN and LSN Trusts and has
26 determined that there are sufficient assets in both trusts to offset any deficiency
27

28

⁹ *Klabacka*, 394 P.3d at 948.

1
2 once a final balance and distribution amount has been determined. Once the
3 tracing is finalized and a final balance sheet is received, this Court will Order the
4 proper funds to be transferred to each party accordingly.
5

6 **ORDER**

7 Based thereon:

8
9 **IT IS HEREBY ORDERED** that Larry Bertsch, CPA is to trace the
10 property in both the Eric L. Nelson Nevada Trust and the Lynita S. Nelson
11 Nevada Trust beginning from the execution date of May 30, 2001 through the
12 date of the Divorce Decree, June 3, 2013.
13

14 **IT IS FURTHER ORDERED** that the tracing services provided by Larry
15 Bertsch, CPA is to be paid equally by both Eric Nelson and Lynita Nelson,
16 beginning with an initial payment of \$5,000 each. This payment shall be made
17 within thirty days of the date of this Order.
18

19 **IT IS FURTHER ORDERED** that the Lynita S. Nelson Nevada Trust
20 execute Quitclaim Deeds to transfer the Lindell Rd. and Banone, LLC Properties
21 to the Eric L. Nelson Nevada Trust. The transfer of the property shall be
22 completed within thirty days of the date of this Order
23

24 **IT IS FURTHER ORDERED** that Larry Bertsch, CPA is to acquire an
25 appraisal for the Brian Head Utah Cabin from an appraiser of his choosing. Mr.
26 Bertsch is to select an appraiser different from the original appraiser, if different
27
28

1
2 appraiser is available. Once received, the Eric L. Nelson Nevada Trust has the
3 right of first refusal on any offer on the property with the ability to purchase the
4 Lynita S. Nelson Nevada Trust's 50% interest.
5

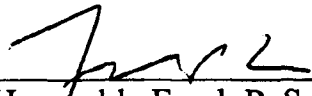
6 **IT IS FURTHER ORDERED** that in the event that the Eric L. Nelson
7 Nevada Trust and the Lynita S. Nelson Nevada Trust cannot agree on a valid
8 offer, Larry Bertsch, CPA, is to retain a realtor to place the property on the open
9 market for a fair market offer. Once the realtor determines that a fair offer has
10 been received, the Eric L. Nelson Nevada Trust has the right of first refusal on
11 any offer on the property with the ability to purchase the Lynita S. Nelson
12 Nevada Trust's 50% interest.
13
14

15 **IT IS FURTHER ORDERED** that any appraisal and realtor costs
16 associated with the Brian Head Utah Cabin sale will be paid equally by both Eric
17 L. Nelson Nevada Trust and the Lynita S. Nelson Nevada Trust.
18

19 **IT IS FURTHER ORDERED** that the \$720,000.00 being held in Bank of
20 Nevada Account 7502338705 be released to an account of the Eric L. Nelson
21 Nevada Trust's choosing.
22

23 **IT IS FURTHER ORDERED** that any Stay of Order is hereby **DENIED**.
24

25 DATED this 19th day of April, 2018.
26

27 
28 Honorable Frank P. Sullivan
District Court Judge – Dept. O

FRANK P. SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O
LAS VEGAS NV 89101

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Attorneys for Lynita Sue Nelson

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,

v.

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

Defendants/Counterclaimants.

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

Date of Hearing: 06/05/18
Time of Hearing: 9:30 a.m.

ORAL ARGUMENT
REQUESTED: YES

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

Crossclaimant,

v.

LYNITA SUE NELSON, Individually
and as Investment Trustee of the LSN
NEVADA TRUST, dated
May 30, 2001, and ERIC NELSON,

Cross-Defendant.

SRAPP000356

1 NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS
2 MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE
3 UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10)
4 DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A
5 WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN
(10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE
REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT
HEARING PRIOR TO THE SCHEDULED HEARING DATE.

6 **LYNITA NELSON'S MOTION FOR RECONSIDERATION AND**
7 **CLARIFICATION OF THE COURT'S DECISION ENTERED**
8 **APRIL 19, 2018**

8 COMES NOW, Defendant and Cross-Defendant, LYNITA SUE
9 NELSON ("Lynita"), by and through her counsel, ROBERT P.
10 DICKERSON, ESQ., and JOSEF M. KARACSONYI, ESQ., of THE
11 DICKERSON KARACSONYI LAW GROUP, and respectfully submits for
12 the Court's consideration her Motion for Reconsideration, Correction, and
13 Clarification of the Court's Decision Entered April 19, 2018 ("Motion").

14 Specifically, Lynita respectfully requests the following relief:

15 1. That the Court reconsider its Decision entered April 19, 2018,
16 and Order that the appropriate time frame for the tracing of the parties'
17 property is from July 13, 1993, through June 3, 2013;

18 2. That the Court reconsider its Decision entered April 19, 2018,
19 and Order the \$720,000 to be held in a blocked account until such funds
20 can be traced;

21 3. That the Court immediately enter a Joint Preliminary
22 Injunction;

23 4. That the Court enter an Order that any exercise of the right
24 of first refusal by Eric and ELN Trust to purchase the LSN Trust's
25 interest in the Brian Head cabin is done without prejudice to the parties'
26 property rights; and

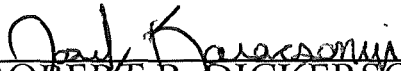
27 5. For such further relief as deemed appropriate in the premises.

28 . . .

1 This Motion is made and based upon the pleadings and papers on
2 file herein, the Memorandum of Points and Authorities attached hereto,
3 and any oral argument at the time of the hearing of this matter.

4 DATED this 3rd day of May, 2018.

5 THE DICKERSON KARACSONYI
6 LAW GROUP

7 
8 ROBERT P. DICKERSON, ESQ.
9 Nevada Bar No. 000945
10 JOSEF M. KARACSONYI, ESQ.
11 Nevada Bar No. 010634
12 1745 Village Center Circle
13 Las Vegas, Nevada 89134
14 Attorneys for Lynita Sue Nelson

15 **NOTICE OF MOTION**

16 TO: ERIC L. NELSON, Plaintiff;


17 TO: MATT KLABACKA, Distribution Trustee of the ELN Trust;

18 TO: RHONDA K. FORSBERG, ESQ., of RHONDA K. FORSBERG,
19 CHARTERED, Attorney for Plaintiff; and

20 TO: MARK A. SOLOMON, ESQ., and JEFFREY P. LUSZECK, ESQ. of
21 SOLOMON DWIGGINS & FREER, LTD., Attorneys for
22 Distribution Trustee of the ELN Trust.

23 PLEASE TAKE NOTICE that the undersigned will bring the
24 foregoing MOTION FOR RECONSIDERATION AND CLARIFICATION
25 OF THE COURT'S DECISION ENTERED APRIL 19, 2018, on for
26 hearing before the above-entitled Court ^{at} 9:30 a.m. on June 5, 2018.

27 THE DICKERSON KARACSONYI
28 LAW GROUP

29 By 
30 ROBERT P. DICKERSON, ESQ.
31 Nevada Bar No. 000945
32 JOSEF M. KARACSONYI, ESQ.
33 Nevada Bar No. 010634
34 1745 Village Center Circle
35 Las Vegas, Nevada 89134
36 Attorneys for Lynita Sue Nelson

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTUAL STATEMENT**

3 **A. Introduction**

4 This matter was recently before the Court on January 31, 2018, on
5 Plaintiff, ERIC L. NELSON (“Eric’s) Motion to Enforce Supreme Court’s
6 Order Dated May 25, 2017; Motion to Hold Lynita S. Nelson in
7 Contempt for Violation of September 22, 2014 Order; and for Attorneys’
8 Fees and Costs, and Lynita’s Opposition to Motion to Enforce Supreme
9 Court’s Order Dated May 25, 2017; Motion to Hold Lynita S. Nelson in
10 Contempt for Violation of September 22, 2014 Order; and for Attorneys’
11 Fees and Costs, and Countermotion to Final Judgment Consistent with
12 Nevada Supreme Court’s Remand, or in the Alternative, for Affirmation
13 of Joint Preliminary Injunction, for a Received To Manage Property
14 Pending Final Judgment, for Updated Financial Disclosures and Exchange
15 of Financial Information, and for Sale of Property for Payment of
16 Attorneys’ Fees and Costs filed July 31, 2017 (“Opposition and
17 Countermotion”). At the conclusion of the hearing of January 31, 2018,
18 the Court took the matter under advisement, and thereafter issued its
19 Decision on April 19, 2018 (“Decision”).

20 Upon receipt and review of the Court’s Decision, it became clear that
21 clarification was necessary on a number of issues, and that the Court
22 inadvertently did not make a ruling on a number of other issues. In
23 addition, Lynita seeks reconsideration of the Court’s Decision regarding
24 the appropriate starting date to conduct a tracing of the parties’ assets.

25 . . .
26 . . .
27 . . .
28 . . .

1 B. The Need For Reconsideration/Clarification Of Certain Portions Of
2 The Court's Decision

3 1. The Appropriate Time frame For Tracing

4 During the hearing of January 31, 2018, the Court made the
5 following statements with regard to outstanding issues in this matter, and
6 the manner in which the Court believed such issues were to be handled:

7 Court: The issue I see is tracing. From the separate property
8 agreement, which was 1993. I believe it was signed on
9 July 13th 1993, so I don't intend to go beyond that
10 period on that because I think the Supreme Court
11 indicated those were appropriate separate property
12 agreements so any community property interest would
13 be transmuted at that time to separate property. My
14 inclination would be to go tracing from the, after the July
15 13th 1993 to see if any community property claims,
16 people put in the trust on that, they could put their half
17 but they could not put the other party's half, so my plan
18 would be to trace after the July 13th, because when I read
19 the separate property agreement I saw nothing for post
20 property after that. It just said this is the property we
21 got, this is separate property as of this time, but nothing
22 for future property acquired during their marriage, which
is presumed to be community property. So my plan
would be to trace it going back to July, or maybe
probably start August 1st 1993, currently because I know
when they did the trusts, those were 2001, but there
could have been property from 1993 August 1st to the
2001 trusts which could have had community property
claims. I don't know. And then for the 2001, of course,
anything that was community property that either party
put in to the trust, they would not have the right to put
the other party's half. So that would be my inclination
is do tracing from August 1st 1993 up to basically the
time of the divorce decree to sift through and see was
there community property interest.

23 January 31, 2018 Hearing at 11:34:57 (emphasis added). Further, while
24 the Court acknowledged that such a tracing would be extremely time-
25 consuming and expensive, the Court emphasized that "we need to get this
26 done for everybody." January 31, 2018 Hearing at 11:37:20.

27 Notwithstanding the above statements, the Court's Decision entered
28 on April 19, 2018, concludes at page 3 that "the proper date to begin

1 tracing would be May 30, 2001, the date both the ELN and LSN Trusts
2 were executed.” The Court’s stated basis for such a conclusion is that
3 “The Nevada Supreme Court held that both the ELN and LSN Trusts
4 were funded with separate property stemming from the 1993 Separate
5 Property Agreement.” As will be detailed further in the Legal Analysis
6 Section below, however, the Nevada Supreme Court’s ruling on this issue
7 was based on the perception that this Court had itself made such a
8 finding, and such a statement does not therefore constitute the law of the
9 case as argued by ELN Trust in its Reply to Opposition to Motion to
10 Enforce Supreme Court’s Order Dated May 25, 2017; Motion to Hold
11 Lynita S. Nelson in Contempt for Violation of September 22, 2014 Order;
12 and for Attorneys’ Fees and Costs and Opposition to Countermotion for
13 Final Judgment Consistent with Nevada Supreme Court’s Remand, or in
14 the Alternative, for Affirmation of Joint Preliminary Injunction, for a
15 Receiver to Manage the Property Pending Final Judgment, for Updated
16 Financial Disclosures and Exchange of Financial Information, and for Sale
17 of Property for Payment of Attorneys’ Fees and Costs.

18 In addition to the above, in reaching the determination of what is
19 the appropriate timeframe for conducting a tracing in this matter, it is
20 extremely important for the Court to clearly establish and confirm at this
21 time the nature and extent of the tracing that had been conducted by the
22 Court at the time of entry of the parties’ Decree of Divorce, and to clarify
23 the findings that were made by the Court in such Decree. The Court’s
24 statements at the January 31, 2018 hearing, quoted above, clearly indicate
25 that the Court did not previously trace the properties from the 1993
26 Separate Property Agreement to the properties placed in the ELN Trust
27 and LSN Trust in 2001. A written confirmation and clarification of this
28 fact is absolutely vital, as Eric and ELN Trust argue that the Nevada

1 Supreme Court has expanded the Court's findings beyond those actually
2 made when it stated that "the district court found that the SPA was valid
3 and the parties' SSST's were validly established and funded with separate
4 property." *Klabacka v. Nelson*, 133 Nev. Adv. Op. 24, 394 P.3d 940, 944
5 (2017).

6 Undersigned counsel specifically requested during the hearing of
7 January 31, 2018, that the Court include a confirmation of the prior
8 tracing and of its prior findings in its Decision. The Court acknowledged
9 such request, and intimated that such a statement would be included in
10 the Decision. The exchange in question is quoted below:

11 Mr. Karacsonyi: I just had one question. I'm sure you're already
12 intending on doing this, but, whatever decision you
13 make, in the decision, we would appreciate
14 certainly if you could clarify in there, make clear,
15 when you're tracing, what the tracing that occurred
16 in the underlying proceedings was, so the Supreme
17 Court knows whether you did find. If you did find
18 that it was separate property, then fine. If you
19 didn't. If you could just make it clear whatever
20 your ruling, whatever you had done before.
21 Because I know that's going to be an argument
22 above, so.

23 Court: The issue where you said the Supreme Court said
24 I made those findings, you make sure I made
25 them?

26 Mr. Karacsonyi: Yeah, and if you can just put in your order – even
27 if you rule against us, or you rule in their favor or
28 in our favor – just so that we know we can make
clear to the Supreme Court that this is what you
did before so that they know exactly what you did.

29 January 31, 2018 Hearing at 12:17:54. Notwithstanding the above, the
30 Court's Decision does not include any statement regarding the nature and
31 extent of the Court's prior tracing, nor does it include any statement

32 ...

33 ...

34 ...

1 confirming or denying that the Court ever found that the ELN Trust and
2 the LSN Trust were funded with separate property.¹

3 2. The Release of \$720,000 To ELN Trust

4 During the hearing of January 31, 2018, the Court indicated that it
5 was not inclined to release to ELN Trust the \$720,000 held in a blocked
6 account at Bank of Nevada, as the Court still needed to “have that traced
7 to see where that money came from.” January 31, 2018 Hearing at
8 11:32:48. The Court’s Decision, however, concludes that “[a]s the
9 Supreme Court held that this Court erred in ordering the ELN Trust to
10 pay Mr. Nelson’s personal obligations, and as these funds were still readily

11 _____
12 ¹ The relevant findings made in the Decree of Divorce are as follow:

13 THE COURT FURTHER FINDS that, pursuant to NRS 123.080 and
14 NRS 123.220(1), the Separate Property Agreement entered into by the
parties on July 13, 1993, was a valid Agreement.

15 THE COURT FURTHER FINDS that Schedule A of the Separate
16 Property Agreement contemporaneously established the Eric L. Nelson
Separate Property Trust and named Mr. Nelson as trustor. [itemization
17 of property held in trust omitted].

18 THE COURT FURTHER FINDS that Schedule B of the Separate
19 Property Agreement contemporaneously established the Lynita S. Nelson
Separate Property Trust and named Mrs. Nelson as trustor. [itemization
20 of property held in trust omitted].

21 ...

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

24 ...

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

27 Decree, pgs. 3-5. None of the above-quoted findings appear to state that the property
28 used to fund the LSN Trust and the ELN Trust was separate property, but rather that
the assets held in the parties’ respective Separate Property Trusts – whether community
property or separate property at the time of the formation of the ELN Trust and the
LSN Trust – were transferred into the ELN Trust and the LSN Trust.

1 available to be dispersed, this Court will Order the \$720,000 to be
2 transferred from the Bank of Nevada blocked account to an account of the
3 ELN Trust's choosing." Accordingly, the monies in question are to be
4 released to ELN Trust, which will then likely spend or "disappear" the
5 monies.

6 Lynita requests that the Court reconsider this ruling and simply put
7 in place an Order transferring the \$720,000 from the existing blocked
8 account with Bank of Nevada to another frozen account without any
9 designation that the funds are to assist in the payment of Eric's personal
10 obligations. Such a ruling would not only comply with the Nevada
11 Supreme Court's ruling that ELN Trust cannot be made to pay Eric's
12 personal obligations, but it would simultaneously ensure that the monies
13 in question are traced prior to being released to ELN Trust and perhaps
14 irretrievably spent and lost by the community.

15 C. Issues Upon Which The Court Did Not Rule

16 1. Joint Preliminary Injunction

17 In Lynita's Opposition and Countermotion, Lynita requested that,
18 in the event the Court determined it needed additional evidence regarding
19 the character of the parties' property, the Court affirm the Joint
20 Preliminary Injunction previously entered.

21 During the hearing of January 31, 2018, counsel for the ELN Trust
22 requested that the Court require the LSN Trust to execute quitclaim deeds
23 transferring to ELN Trust interests in the Lindell Property and the
24 Banone, LLC properties. The Court indicated that it was inclined to do
25 so, and that such order would likely be included in its Decision. In
26 response, undersigned counsel again requested that the Court put in place
27 a Joint Preliminary Injunction. The exchange was as follows:

28 . . .

1 Court: My inclination is to order those quitclaims deeds,
2 but I'll wait in my decision and get that, but just so
3 you know it's coming unless my research changes
that is my inclination to order those quitclaim
deeds be transferred back [. . .].

4 Mr. Karacsonyi: And you'll address the JPI then at the same time?

5 Court: Absolutely.

6 Mr. Karacsonyi: Because those go hand in hand.

7 Court: Absolutely. And I would be issuing a JPI the same
8 thing I did before on that and making sure its not
9 encumbered or sold until we get it ultimately
resolved [...].

10 January 31, 2018 Hearing at 12:20:44.

11 The Court's Decision did require the LSN Trust to transfer to the
12 ELN Trust interests in the Banone, LLC properties and the Lindell
13 Property. In addition, the Court's Decision permitted the \$720,000 held
14 in the Bank of Nevada blocked account to be transferred to an account of
15 the ELN Trust's choosing. Notwithstanding these Orders, and
16 notwithstanding the above-quoted exchange, the Court's Decision made
17 no mention whatsoever of a Joint Preliminary Injunction. Lynita believes
18 that this omission was inadvertent, and now requests that such a Joint
19 Preliminary Injunction be put in place before the assets transferred to Eric
20 and ELN Trust are transferred or encumbered. Lynita will be submitting
21 an ex parte request for a Joint Preliminary Injunction to the Court, but in
22 the event the Court does not desire to issue such a Joint Preliminary
23 Injunction on an ex parte basis, this request is included herein.

24 2. Buyout of Brian Head Cabin

25 During the course of the hearing of January 31, 2018, undersigned
26 counsel requested that in the event the Court followed its stated
27 inclination and ordered the Brian Head cabin to be sold – providing ELN
28 Trust with a right of first refusal to purchase the property – the Court

1 should also make clear that ELN Trust's buyout of LSN Trust's interest
2 be made without prejudice. In other words, in the event the monies used
3 by ELN Trust to purchase LSN Trust's interest in the Brian Head cabin
4 are ultimately traced and determined by the Court to constitute the
5 community property of the parties, Lynita should be entitled to receive an
6 additional award of property over and above her half of the remaining
7 community property in the amount of one-half (½) of the purchase price
8 of the interest in the Brian Head cabin sold by LSN Trust to ELN Trust.

9 While the Court's Decision provides that the Brian Head cabin is to
10 be sold, and provides that ELN Trust has the right of first refusal with
11 regard to the purchase of such cabin, the Court did not include any
12 provision providing that the monies ELN Trust uses to purchase such
13 interest will be without prejudice to Lynita and LSN Trust, and that
14 Lynita will be compensated should ELN Trust utilize to purchase the
15 Brian Head cabin monies that are ultimately determined to constitute
16 community property of the parties.

17 **II. LEGAL ANALYSIS**

18 **A. The Court Should Reconsider/Clarify Certain Portions Of Its** 19 **Decision of April 19, 2018**

20 Nevada Rules of Civil Procedure, Rule 60 (2018), provides in
21 pertinent part as follows:

22 (a) Clerical Mistakes. Clerical mistakes in judgments, orders
23 or other parts of the record and errors therein arising from
24 oversight or omission may be corrected by the court at any
25 time of its own initiative or on the motion of any party and
26 after such notice, if any, as the court orders. During the
pendency of an appeal, such mistakes may be so corrected
before the appeal is docketed in the appellate court, and
thereafter while the appeal is pending may be so corrected with
leave of the appellate court.

27 In addition, Eighth Judicial District Court Rules, Rule 5.512 (2018),
28 provides as follows:

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

5 (b) If a motion for reconsideration and/or rehearing is
6 granted, the court may make a final disposition without
7 hearing, may set it for hearing or resubmission, or may make
such other orders as are deemed appropriate under the
circumstance.

8 Finally, NRCP 59(e) provides the trial court the opportunity, within a
9 limited time, to rehear a motion previously brought before it, and to
10 correct or reconsider its order or judgment. *Chiara v. Belaustegui*, 86 Nev.
11 856, 859, 477 P.2d 857, 858 (1970). “[A] court may, for sufficient cause
12 shown, amend, correct, resettle, modify, or vacate, as the case may be, an
13 order previously made and entered on motion in the progress of the cause
14 or proceeding.” *Trail v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026, 1027
15 (1975).

16 1. The Court Should Order That The Appropriate Time Frame
17 For The Tracing Of The Parties’ Property Is From July 13,
1993, Through Entry Of The Parties’ Decree Of Divorce

18 As stated in the Factual Statement above, the Court’s ruling that the
19 tracing of the parties’ property should commence in 2001 is based
20 exclusively on the Nevada Supreme Court’s purported holding that the
21 ELN Trust and LSN Trust were funded in 2001 with the parties’ separate
22 property. Eric and ELN Trust argued for such a ruling, and based their
23 argument on their claim that the Nevada Supreme Court’s holding on this
24 matter constitutes “the law of the case.” Such is not an accurate reading
25 of Nevada case law on the matter, as described below. In fact, the only
26 reasonable analogy to “law of the case doctrine” in this matter leads to the
27 conclusion that the Nevada Supreme Court based its holding on its
28 . . .

1 perception of “the law of the case” as established by this Court’s Decree
2 of Divorce.

3 Pursuant to Nevada law, “where an issue has once been adjudicated
4 by a first appeal, that adjudication is the law of that case in subsequent
5 proceedings.” *Andolino v. State*, 99 Nev. 346, 350, 62 P.2d 631, 633
6 (1983). In this matter, no party to this action raised on appeal the issue
7 of whether the ELN Trust and the LSN Trust were funded with separate
8 or community property, and the issue was not “adjudicated” by the
9 Nevada Supreme Court. Accordingly, the law of the case doctrine is
10 entirely inapposite.

11 It is well-established by Nevada law that “[a] district court’s findings
12 of fact and conclusions of law, even where predicated upon conflicting
13 evidence, must be upheld if supported by substantial evidence, and may
14 not be set aside unless clearly erroneous.” *Pombo v. Nev. Apartment Ass’n.*,
15 113 Nev. 559, 562, 939 P.2d 725, 727 (1997). Likewise, the Nevada
16 Supreme Court in this very matter specifically noted that “[t]his court
17 defers to a district court’s findings of fact and will only disturb them if
18 they are not supported by substantial evidence.” *Klabacka v. Nelson*, 133
19 Nev. Adv. Op. 24, 394 P.3d 940, 949 (2017) (internal citations omitted).

20 With this legal background in mind, the Nevada Supreme Court
21 specifically noted that “the district court found that the SPA was valid
22 and the parties’ SSST’s were validly established and funded with separate
23 property.” *Id.*, 394 P.3d at 944. The Nevada Supreme Court did not itself
24 perform any tracing of the parties’ property, nor did it make any factual
25 findings regarding same. Similarly, the Nevada Supreme Court did not
26 rule that any finding of fact by this Court regarding a tracing of the
27 parties’ property was erroneous or that a contrary finding was being made.
28 Accordingly, the Nevada Supreme Court relied upon this Court’s

1 purported finding that the LSN Trust and the ELN Trust were funded
2 with the parties' separate property, and deferred to such purported finding
3 in its own holding. In other words, the Nevada Supreme Court relied
4 upon the "law of the case" as established by this Court's Decree of
5 Divorce.

6 In the event this Court truly made a finding that the ELN Trust and
7 LSN Trust were funded with the parties' separate property in 2001, then
8 the Nevada Supreme Court's holding does, in fact, confirm the law of the
9 case, and the Court's instant Decision regarding the necessary time frame
10 for tracing is accurate. In the event the Court did not make such a
11 finding, however (as indicated by the Court at the January 31, 2018
12 hearing), then the Nevada Supreme Court's directives as to the
13 appropriate time frame for tracing of the parties' property are clear:

14 In a divorce involving trust assets, the district court must trace
15 those trust assets to determine whether any community
16 property exists within the trusts – as discussed below, the
17 parties' respective separate property in the SSST's would be
afforded the statutory protection against court-ordered
distribution, while any community property would be subject
to the district court's equal distribution.

18 *Id.*, 394 P.3d at 948. In other words, this Court must conduct a tracing
19 that covers a time period sufficient to know whether there was community
20 property of the parties placed into any trusts. In the event this Court
21 truly found at the time of the parties' divorce that the LSN Trust and ELN
22 Trust were funded with the parties' separate property in 2001, then the
23 appropriate time frame for the tracing would be from 2001 to entry of the
24 Decree of Divorce. If, however, this Court never made such a finding, and
25 it remains unknown to the Court whether the ELN Trust and LSN Trust
26 were funded in 2001 with separate or community property, then the
27 appropriate time frame for the tracing is from July 13, 1993, to entry of
28 the Decree of Divorce. Again, during the hearing of January 31, 2018, the

1 Court specifically indicated that it did not know whether the property that
2 funded the ELN Trust and LSN Trust in 2001 was separate or community
3 property:

4 So my plan would be to trace it going back to July, or maybe
5 probably start August 1st 1993, currently because I know when
6 they did the trusts, those were 2001, but there could have been
7 property from 1993 August 1st to the 2001 trusts which could
8 have had community property claims. I don't know.

9 January 31, 2018 Hearing at 11:35:40.

10 Based on all the above, Lynita believes that this Court never made
11 a finding that the property with which the LSN Trust and ELN Trust were
12 funded in 2001 constituted the separate property of the parties.
13 Accordingly, Lynita respectfully requests that the Court reconsider its
14 Decision that the tracing be conducted from 2001 to the entry of the
15 Decree of Divorce, and that the tracing instead be conducted from July 13,
16 1993, to the entry of the Decree of Divorce. In addition, Lynita
17 respectfully requests that this Court include in its Decision a statement
18 confirming the nature and extent of the tracing that had been conducted
19 at the time of the parties' divorce, and whether the Court had, in fact,
20 made any finding that the LSN Trust and ELN Trust were funded in 2001
21 with the parties' separate property.

22 2. The Court Should Order The \$720,000 To Be Transferred To
23 A New Blocked Account Pending A Tracing Of The Parties'
24 Property

25 As detailed above, the Court's Decision allows for the amount of
26 \$720,000 – all of which may ultimately be determined to be the
27 community property of the parties – to be released to the ELN Trust
28 without any restrictions being placed thereon. In keeping with the prior
actions of ELN Trust and Eric throughout the course of this action, there
is a significant likelihood that ELN Trust will spend or otherwise
irretrievably lose/transfer such monies once they are released. Accordingly,

1 in order to comply with the Nevada Supreme Court's ruling that ELN
2 Trust cannot be required to pay Eric's personal obligations, and to
3 simultaneously protect the monies in question, Lynita respectfully requests
4 that this Court reconsider its Decision and enter an Order requiring the
5 \$720,000 to be placed in a new blocked account that is not specifically
6 designated as being intended to assist Eric in the payment of his personal
7 support obligations.

8 B. The Court Should Immediately Enter A Joint Preliminary Injunction
9 In This Matter

10 EDCR 5.517 requires the issuance of a joint preliminary injunction
11 upon the request of any party, to prohibit all parties, and "their officers,
12 agents, servants, employees, or a person in active concert or participation
13 with them from: (1) Transferring, encumbering, concealing, selling, or
14 otherwise disposing of any of the joint, common, or community property
15 of the parties or any property that is subject of a claim of community
16 interest, except in the usual course of conduct or for the necessities of life
17 or for retention of counsel. . . ." Emphasis added. NRS 125.050 requires
18 the Court to "make such restraining order or other order as appears
19 necessary to prevent the act or conduct and preserve the status quo
20 pending final determination of the cause."

21 Based on the above, as well as the arguments and statements made
22 during the hearing of January 31, 2018, Lynita respectfully requests that
23 this Court enter a Joint Preliminary Injunction in this matter.

24 C. The Court Should Order That Any Exercise Of The Right Of First
25 Refusal By Eric And ELN Trust To Purchase The LSN Trust's
Interest in The Brian Head Cabin Is Without Prejudice

26 As detailed above, the Court should make clear that ELN Trust's
27 right of first refusal to purchase LSN Trust's interest in the Brian Head
28 cabin must be exercised, if at all, without prejudice to Lynita/LSN Trust.

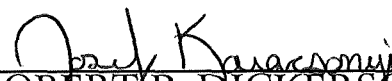
1 In the event the monies used by ELN Trust to purchase LSN Trust's
2 interest in the Brian Head cabin are ultimately determined by the Court
3 to constitute the community property of the parties, Lynita should be
4 entitled to receive an additional award of property over and above her half
5 of the remaining community property in the amount of one-half (½) of
6 the purchase price of the interest in the Brian Head cabin sold by LSN
7 Trust to ELN Trust.

8 **III. CONCLUSION**

9 Based upon the foregoing, Lynita respectfully request the Court
10 enter the following orders and grant her requests for relief:

11 DATED this 3rd day of May, 2018.

12 THE DICKERSON KARACSONYI
13 LAW GROUP

14 
15 ROBERT P. DICKERSON, ESQ.
16 Nevada Bar No. 000945
17 JOSEF M. KARACSONYI, ESQ.
18 Nevada Bar No. 010634
19 1745 Village Center Circle
20 Las Vegas, Nevada 89134
21 Attorneys for Defendant
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☒ pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCp 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

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

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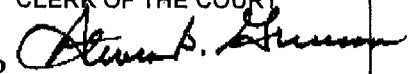
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LIS
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Attorneys for Lynita Sue Nelson

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,

v.

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

Defendants/Counterclaimants.

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

Crossclaimant,

v.

LYNITA SUE NELSON, Individually
and as Investment Trustee of the LSN
NEVADA TRUST, dated
May 30, 2001, and ERIC NELSON,

Cross-Defendant.

CASE NO. D-09-411537-D
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This action affects real property that is situated in the County of Clark, State of Nevada, and is more commonly known as 1301 Heather Ridge Road, North Las Vegas, Nevada 89031, APN # 124-28-814-010. Defendant/Cross-Defendant, LYNITA SUE NELSON, presently claims an unadjudicated community property interest in said property, which is particularly described as follows:

DATED this 11th day of May, 2018.

JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
1745 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Lynita Sue Nelson

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SRAPP000378

Steven D. Grierson

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

Attorneys for Lynita Sue Nelson

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,

v.

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

Defendants/Counterclaimants.

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

Crossclaimant,

v.

LYNITA SUE NELSON, Individually
and as Investment Trustee of the LSN
NEVADA TRUST, dated
May 30, 2001, and ERIC NELSON,

Cross-Defendant.

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

SRAPP000379

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This action affects real property that is situated in the County of Clark, State of Nevada, and is more commonly known as 5317 Clover Blossom Court, North Las Vegas, Nevada 89031, APN # 124-31-220-093. Defendant/Cross-Defendant, LYNITA SUE NELSON, presently claims an unadjudicated community property interest in said property, which is particularly described as follows:

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

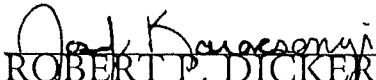
[illegible]

1 PARCEL TWO (2):

2 A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS
3 AND ENJOYMENT IN AND TO THE ASSOCIATION
4 PROPERTY AS SET FORTH IN THE DECLARATION OF
5 COVENANTS, CONDITIONS AND RESTRICTIONS FOR
6 COUNTY GARDEN (ARBOR GATE) A COMMON
7 INTEREST COMMUNITY, RECORDED FEBRUARY 25,
8 2000, IN BOOK 20000225 AS DOCUMENT NO. 00963, OF
9 OFFICIAL RECORDS OF CLARK COUNTY, NEVADA, AS
10 THE SAME MAY FROM TIME TO TIME BE AMENDED
11 AND OR SUPPLEMENTED, WHICH EASEMENT IS
12 APPURTENANT TO PARCEL ONE (1).

13 DATED this 11th day of May, 2018.

14 THE DICKERSON KARACSONYI
15 LAW GROUP

16 
17 ROBERT P. DICKERSON, ESQ.
18 Nevada Bar No. 000945
19 JOSEF M. KARACSONYI, ESQ.
20 Nevada Bar No. 010634
21 1745 Village Center Circle
22 Las Vegas, Nevada 89134
23 Attorneys for Lynita Sue Nelson
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APN# 138-03-815-002

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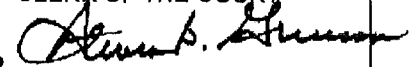
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CLARK COUNTY RECORDER

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SRAPP000382



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ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
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Telephone: (702) 388-8600
Facsimile: (702) 388-0210
Email: info@thedklawgroup.com

Attorneys for Lynita Sue Nelson

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,

v.

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

Defendants/Counterclaimants.

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

Crossclaimant,

v.

LYNITA SUE NELSON, Individually
and as Investment Trustee of the LSN
NEVADA TRUST, dated
May 30, 2001, and ERIC NELSON,

Cross-Defendant.

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

SRAPP000383

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This action affects real property that is situated in the County of Clark, State of Nevada, and is more commonly known as 4133 Compass Rose Way, Las Vegas, Nevada 89108, APN # 138-03-815-002. Defendant/Cross-Defendant, LYNITA SUE NELSON, presently claims an unadjudicated community property interest in said property, which is particularly described as follows:

DATED this 11th day of May, 2018.

ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
1745 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Lynita Sue Nelson

Inst #: 20180514-0000815

Fees: \$40.00

05/14/2018 11:32:22 AM

Receipt #: 3400971

Requestor:

DICKERSON KARACSONYI LAW GR

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DEBBIE CONWAY

CLARK COUNTY RECORDER

Src: FRONT COUNTER

Ofc: TENAYA BRANCH

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APN# 138-12-415-012

(11 digit Assessor's Parcel Number may be obtained at:
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City/State/Zip Las Vegas, NV 89134

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name _____

Address _____

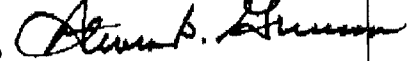
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SRAPP000385



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

Attorneys for Lynita Sue Nelson

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,

v.

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

Defendants/Counterclaimants.

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

Crossclaimant,

v.

LYNITA SUE NELSON, Individually
and as Investment Trustee of the LSN
NEVADA TRUST, dated
May 30, 2001, and ERIC NELSON,

Cross-Defendant.

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

SRAPP000386

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This action affects real property that is situated in the County of Clark, State of Nevada, and is more commonly known as 3301 Terra Bella Drive, Las Vegas, Nevada 89108, APN # 138-12-415-012. Defendant/Cross-Defendant, LYNITA SUE NELSON, presently claims an unadjudicated community property interest in said property, which is particularly described as follows:

DATED this 11th day of May, 2018.

ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
1745 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Lynita Sue Nelson

Inst #: 20180514-0000802
Fees: \$40.00
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Requestor:
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APN# 138-14-711-033

(11 digit Assessor's Parcel Number may be obtained at:
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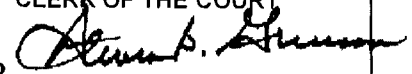
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SRAPP000388



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

Attorneys for Lynita Sue Nelson

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,

v.

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

Defendants/Counterclaimants.

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

Crossclaimant,

v.

LYNITA SUE NELSON, Individually
and as Investment Trustee of the LSN
NEVADA TRUST, dated
May 30, 2001, and ERIC NELSON,

Cross-Defendant.

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

SRAPP000389

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APN# 138-23-519-014

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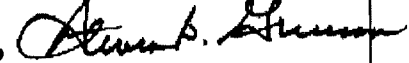
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SRAPP000391



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ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
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Telephone: (702) 388-8600
Facsimile: (702) 388-0210
Email: info@thedklawgroup.com

Attorneys for Lynita Sue Nelson

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,

v.

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

Defendants/Counterclaimants.

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

Crossclaimant,

v.

LYNITA SUE NELSON, Individually
and as Investment Trustee of the LSN
NEVADA TRUST, dated
May 30, 2001, and ERIC NELSON,

Cross-Defendant.

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

SRAPP000392

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APN# 138-23-519-054

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SRAPP000394

Steven D. Grierson

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

Attorneys for Lynita Sue Nelson

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,

v.

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

Defendants/Counterclaimants.

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

Crossclaimant,

v.

LYNITA SUE NELSON, Individually
and as Investment Trustee of the LSN
NEVADA TRUST, dated
May 30, 2001, and ERIC NELSON,

Cross-Defendant.

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

SRAPP000395

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This action affects real property that is situated in the County of Clark, State of Nevada, and is more commonly known as 6301 Cambria Avenue, Las Vegas, Nevada 89108, APN # 138-23-519-054. Defendant/Cross-Defendant, LYNITA SUE NELSON, presently claims an unadjudicated community property interest in said property, which is particularly described as follows:

DATED this 11th day of May, 2018.

ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
1745 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Lynita Sue Nelson

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05/14/2018 11:32:22 AM
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JOSEF M. KARACSONYI, ESQ.
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1745 Village Center Circle
Las Vegas, Nevada 89134
Telephone: (702) 388-8600
Facsimile: (702) 388-0210
Email: info@thedklawgroup.com

Attorneys for Lynita Sue Nelson

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,

v.

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MATT KLABACKA,
as Distribution Trustee of the
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dated May 30, 2001,

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v.

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Cross-Defendant.

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

SRAPP000398

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APN# 139-19-213-073

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City/State/Zip Las Vegas, NV 89134

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

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Address _____

City/State/Zip _____

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Fees: \$40.00

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Receipt #: 3400971

Requestor:

DICKERSON KARACSONYI LAW GR

Recorded By: MAYSM Pgs: 3

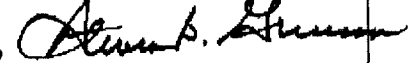
DEBBIE CONWAY

CLARK COUNTY RECORDER

Src: FRONT COUNTER

Ofc: TENAYA BRANCH

SRAPP000400



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

Attorneys for Lynita Sue Nelson

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,

v.

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

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MATT KLABACKA, as Distribution
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Crossclaimant,

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Cross-Defendant.

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

SRAPP000401

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and avoid printing in the 1" margins of document)

APN# 139-19-310-032

(11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrrealprop/owner.aspx>)

TITLE OF DOCUMENT

(DO NOT Abbreviate)

Notice of Lis Pendens

Document Title on cover page must appear EXACTLY as the first page of the document
to be recorded.

RECORDING REQUESTED BY:

The Dickerson Karacsonyi Law Group

RETURN TO: Name The Dickerson Karacsonyi Law Group

Address 1745 Village Center Circle

City/State/Zip Las Vegas, NV 89134

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name _____

Address _____

City/State/Zip _____

This page provides additional information required by NRS 111.312 Sections 1-2.

To print this document properly, do not use page scaling.

P:\Common\Forms & Notices\Cover Page Template Oct2017

Inst #: 20180514-0000813

Fees: \$40.00

05/14/2018 11:32:22 AM

Receipt #: 3400971

Requestor:

DICKERSON KARACSONYI LAW GR

Recorded By: MAYSM Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

Src: FRONT COUNTER

Ofc: TENAYA BRANCH

SRAPP000403



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

Attorneys for Lynita Sue Nelson

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,

v.

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

Defendants/Counterclaimants.

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

Crossclaimant,

v.

LYNITA SUE NELSON, Individually
and as Investment Trustee of the LSN
NEVADA TRUST, dated
May 30, 2001, and ERIC NELSON,

Cross-Defendant.

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

SRAPP000404

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NOTICE is hereby given that an action affecting the title of real property is now pending in the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, concerning the above-named parties.

This action affects real property that is situated in the County of Clark, State of Nevada, and is more commonly known as 4601 Concord Village Drive, Las Vegas, Nevada 89108, APN # 139-19-310-032. Defendant/Cross-Defendant, LYNITA SUE NELSON, presently claims an unadjudicated community property interest in said property, which is particularly described as follows:

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

DATED this 11th day of May, 2018.

THE DICKERSON KARACSONYI
LAW GROUP

ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
1745 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Lynita Sue Nelson

Inst #: 20180514-0000807
Fees: \$40.00
05/14/2018 11:32:22 AM
Receipt #: 3400971
Requestor:
DICKERSON KARACSONYI LAW GR
Recorded By: MAYSM Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER
Src: FRONT COUNTER
Ofc: TENAYA BRANCH

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(Must be typed or printed clearly in BLACK ink only
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APN# 139-31-411-073

(11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrealprop/ownr.aspx>)

TITLE OF DOCUMENT

(DO NOT Abbreviate)

Notice of Lis Pendens

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RECORDING REQUESTED BY:

The Dickerson Karacsonyi Law Group

RETURN TO: Name The Dickerson Karacsonyi Law Group

Address 1745 Village Center Circle

City/State/Zip Las Vegas, NV 89134

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name _____

Address _____

City/State/Zip _____

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SRAPP000406



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

Attorneys for Lynita Sue Nelson

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,

v.

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

Defendants/Counterclaimants.

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

Crossclaimant,

v.

LYNITA SUE NELSON, Individually
and as Investment Trustee of the LSN
NEVADA TRUST, dated
May 30, 2001, and ERIC NELSON,

Cross-Defendant.

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

SRAPP000407

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This action affects real property that is situated in the County of Clark, State of Nevada, and is more commonly known as 4412 Baxter Place, Las Vegas, Nevada 89108, APN # 139-31-411-073. Defendant/Cross-Defendant, LYNITA SUE NELSON, presently claims an unadjudicated community property interest in said property, which is particularly described as follows:

DATED this 11th day of May, 2018.

ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
1745 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Lynita Sue Nelson

RECORDING COVER PAGE

(Must be typed or printed clearly in BLACK ink only
and avoid printing in the 1" margins of document)

APN# 161-20-712-026

(11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrealprop/ownr.aspx>)

TITLE OF DOCUMENT

(DO NOT Abbreviate)

Notice of Lis Pendens

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to be recorded.

RECORDING REQUESTED BY:

The Dickerson Karacsonyi Law Group

RETURN TO: Name The Dickerson Karacsonyi Law Group

Address 1745 Village Center Circle

City/State/Zip Las Vegas, NV 89134

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name _____

Address _____

City/State/Zip _____

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Inst #: 20180514-0000817

Fees: \$40.00

05/14/2018 11:32:22 AM

Receipt #: 3400971

Requestor:

DICKERSON KARACSONYI LAW GR

Recorded By: MAYSM Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

Src: FRONT COUNTER

Ofc: TENAYA BRANCH

SRAPP000409

Steven D. Grierson

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

Attorneys for Lynita Sue Nelson

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,

v.

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

Defendants/Counterclaimants.

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

Crossclaimant,

v.

LYNITA SUE NELSON, Individually
and as Investment Trustee of the LSN
NEVADA TRUST, dated
May 30, 2001, and ERIC NELSON,

Cross-Defendant.

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

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Inst #: 20180514-0000816
Fees: \$40.00
05/14/2018 11:32:22 AM
Receipt #: 3400971
Requestor:
DICKERSON KARACSONYI LAW GR
Recorded By: MAYSM Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER
Src: FRONT COUNTER
Ofc: TENAYA BRANCH

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APN# 161-28-401-015
(11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrrealprop/owner.aspx>)

TITLE OF DOCUMENT

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RECORDING REQUESTED BY:

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Address 1745 Village Center Circle
City/State/Zip Las Vegas, NV 89134

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Name _____
Address _____
City/State/Zip _____

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SRAPP000412

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1 THE SOUTHEAST QUARTER (SE 1/4) OF THE
2 SOUTHWEST QUARTER (SW 1/4) OF THE SOUTHEAST
3 QUARTER (SE 1/4) OF THE SOUTHWEST QUARTER (SW
4 1/4) OF SECTION 28, TOWNSHIP 21 SOUTH, RANGE 62
5 EAST, M.D.M.

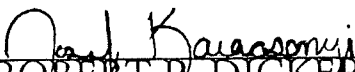
6 EXCEPTING THEREFROM ANY PORTION THEREOF
7 LYING WITHIN U.S. HIGHWAY 95.

8 PARCEL III:

9 AN EASEMENT FOR PRIVATE ACCESS AND PUBLIC
10 UTILITY PURPOSES AS SET FORTH IN RIGHT-OF-WAY
11 GRANT RECORDED JULY 12, 2001 IN BOOK 20010712
12 AS DOCUMENT NO. 00259, IN THE OFFICE OF THE
13 COUNTY RECORDER, CLARK COUNTY, NEVADA,
14 WHICH IS APPURTENANT TO PARCELS I AND II,
15 SUBJECT TO THE TERMS, PROVISIONS, CONDITIONS,
16 STIPULATIONS AND RESTRICTIONS CONTAINED
17 THEREIN.

18 DATED this 11th day of May, 2018.

19 THE DICKERSON KARACSONYI
20 LAW GROUP

21 
22 ROBERT P. DICKERSON, ESQ.
23 Nevada Bar No. 000945
24 JOSEF M. KARACSONYI, ESQ.
25 Nevada Bar No. 010634
26 1745 Village Center Circle
27 Las Vegas, Nevada 89134
28 Attorneys for Lynita Sue Nelson

RECORDING COVER PAGE

(Must be typed or printed clearly in BLACK ink only
and avoid printing in the 1" margins of document)

APN# 163-10-311-010

(11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrrealprop/ownr.aspx>)

TITLE OF DOCUMENT

(DO NOT Abbreviate)

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Document Title on cover page must appear EXACTLY as the first page of the document
to be recorded.

RECORDING REQUESTED BY:

The Dickerson Karacsonyi Law Group

RETURN TO: Name The Dickerson Karacsonyi Law Group

Address 1745 Village Center Circle

City/State/Zip Las Vegas, NV 89134

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name _____

Address _____

City/State/Zip _____

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Inst #: 20180514-0000812
Fees: \$40.00
05/14/2018 11:32:22 AM
Receipt #: 3400971
Requestor:
DICKERSON KARACSONYI LAW GR
Recorded By: MAYSM Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER
Src: FRONT COUNTER
Ofc: TENAYA BRANCH

SRAPP000415



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

Attorneys for Lynita Sue Nelson

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,

v.

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

Defendants/Counterclaimants.

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

Crossclaimant,

v.

LYNITA SUE NELSON, Individually
and as Investment Trustee of the LSN
NEVADA TRUST, dated
May 30, 2001, and ERIC NELSON,

Cross-Defendant.

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

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This action affects real property that is situated in the County of Clark, State of Nevada, and is more commonly known as 2911 Bella Kathryn Circle, Las Vegas, Nevada 89117, APN # 163-10-311-010. Defendant/Cross-Defendant, LYNITA SUE NELSON, presently claims an unadjudicated community property interest in said property, which is particularly described as follows:

LOTS TWO (2) AND THREE (3) OF KATHRYN ESTATES
SUBDIVISION, AS SHOWN BY MAP THEREOF ON FILE
IN BOOK 123 OF PLATS, PAGE 4, IN THE OFFICE OF
THE COUNTY RECORDER OF CLARK COUNTY,
NEVADA.

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS
AND PUBLIC UTILITIES AND INCIDENTAL PURPOSES
OVER THAT PORTION OF SAID LAND LYING WITHIN
THE PRIVATE STREET AND U.E. AS DELINEATED ON
SAID PLAT.

THE DICKERSON KARACSONYI
LAW GROUP

2

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and avoid printing in the 1" margins of document)

APN# 163-13-205-001

(11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrealprop/ownr.aspx>)

Inst #: 20180514-0000803

Fees: \$40.00

05/14/2018 11:32:22 AM

Receipt #: 3400971

Requestor:

DICKERSON KARACSONYI LAW GR

Recorded By: MAYSM Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

Src: FRONT COUNTER

Ofc: TENAYA BRANCH

TITLE OF DOCUMENT

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to be recorded.

RECORDING REQUESTED BY:

The Dickerson Karacsonyi Law Group

RETURN TO: Name The Dickerson Karacsonyi Law Group

Address 1745 Village Center Circle

City/State/Zip Las Vegas, NV 89134

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name _____

Address _____

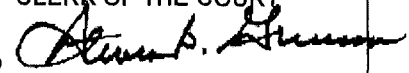
City/State/Zip _____

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SRAPP000418



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

Attorneys for Lynita Sue Nelson

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,

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

v.

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

Defendants/Counterclaimants.

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

Crossclaimant,

v.

LYNITA SUE NELSON, Individually
and as Investment Trustee of the LSN
NEVADA TRUST, dated
May 30, 2001, and ERIC NELSON,

Cross-Defendant.

SRAPP000419

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APN# 179-34-614-071

(11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrrealprop/ownr.aspx>)

TITLE OF DOCUMENT
(DO NOT Abbreviate)

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RECORDING REQUESTED BY:

The Dickerson Karacsonyi Law Group

RETURN TO: Name The Dickerson Karacsonyi Law Group

Address 1745 Village Center Circle

City/State/Zip Las Vegas, NV 89134

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name _____

Address _____

City/State/Zip _____

This page provides additional information required by NRS 111.312 Sections 1-2.

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Inst #: 20180514-0000806

Fees: \$40.00

05/14/2018 11:32:22 AM

Receipt #: 3400971

Requestor:

DICKERSON KARACSONYI LAW GR

Recorded By: MAYSM Pgs: 4

DEBBIE CONWAY

CLARK COUNTY RECORDER

Src: FRONT COUNTER

Ofc: TENAYA BRANCH

SRAPP000421

Steven D. Grierson

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

Attorneys for Lynita Sue Nelson

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,

v.

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

Defendants/Counterclaimants.

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

Crossclaimant,

v.

LYNITA SUE NELSON, Individually
and as Investment Trustee of the LSN
NEVADA TRUST, dated
May 30, 2001, and ERIC NELSON,

Cross-Defendant.

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

SRAPP000422

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This action affects real property that is situated in the County of Clark, State of Nevada, and is more commonly known as 1608 Rusty Ridge Lane, Henderson, Nevada 89002, APN # 179-34-614-071. Defendant/Cross-Defendant, LYNITA SUE NELSON, presently claims an unadjudicated community property interest in said property, which is particularly described as follows:

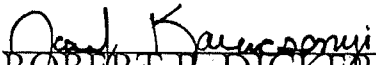
LOT TWO (2) IN BLOCK TWENTY-FOUR (24) OF OLD VEGAS RANCH UNIT 1 (HIGH NOON), A COMMON INTEREST COMMUNITY, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 106 OF PLATS, PAGE 61, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

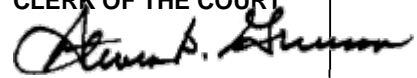
1 PARCEL II:

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

10 DATED this 11th day of May, 2018.

11 THE DICKERSON KARACSONYI
12 LAW GROUP

13 
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*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001*

DISTRICT COURT

COUNTY OF CLARK, NEVADA

ERIC L. NELSON,

Plaintiff

Case No.: D-09-411537-D
Dept. No.: O

vs.

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

Defendants.

**INITIAL OPPOSITION TO LYNITA
NELSON'S MOTION FOR
RECONSIDERATION AND
CLARIFICATION OF THE COURT'S
DECISION ENTERED APRIL 19, 2018;
COUNTERPETITION TO REMOVE LIS
PENDENS INAPPROPRIATELY FILED
BY THE LSN TRUST; AND FOR
ATTORNEYS' FEES AND COSTS**

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

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

Matt Klabacka, Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated
May 30, 2001, hereby files his Initial Opposition to Lynita Nelson's Motion for Reconsideration
and Clarification of the Court's Decision Entered April 19, 2018; and his Counterpetition to
Remove Lis Pendens Inappropriately Filed by the LSN Trust; and for Attorneys' Fees and Costs.

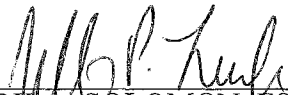
SRAPP000425

Lynita's Counsel has graciously extended the ELN Trust an extension to file its Opposition to Thursday, May 24, 2018. Consequently, the ELN Trust intends to file a Supplement to the Opposition on or before Thursday, May 24, 2018.

DATED this 21st day of May, 2018.

SOLOMON DWIGGINS & FREER, LTD.

By:


MARK A. SOLOMON, ESQ., NSB 0418
JEFFREY P. LUSZECK, ESQ., NSB 9619
9060 West Cheyenne Avenue
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*Attorneys for Matt Klabacka, Distribution
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TRUST dated May 30, 2001*

MEMORANDUM OF POINTS AND AUTHORITIES

I. BRIEF INTRODUCTION AND LEGAL STANDARD

In an attempt to re-litigate issues previously heard and decided by this Court, Lynita S. Nelson requests that this Court "reconsider" and/or "clarify" its Decision entered on April 19, 2018 (hereinafter referred to as "Order") because she disagrees with this Court's ruling. Despite filing a 14-page Motion (which merely regurgitates the same arguments that this Court previously rejected in entering its Order), Lynita fails to identify how the Court's Order is clearly erroneous and or how new facts would support a reversal of this Court's decision. *See, Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976) ("Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for reconsideration be granted.") (Emphasis Added); *Masonry and Tile Constrs. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) (motions for reconsideration must be based on "substantially different evidence [that] is subsequently introduced" showing that "the decision is clearly erroneous."). Reconsideration motions cannot not be used merely to reargue the arguments the movant already made to the Court, to "be used to ask the Court to rethink what it has already thought, *Motorola, Inc. v. J.B. Rodgers Mechanical Contractors*, 215 F.R.D. 581, 582 (D. Ariz. 2003), or "to dress up arguments that previously failed." *Waddell & Reed Fin., Inc. v.*

SRAPP000426

1 *Torchmark Corp.*, 338 F. Supp. 2d 1248, 1250 (D. Kan. 2004) (citations omitted).

2 Indeed, in her Motion, Lynita advances the identical arguments that she previously raised,
3 and/or could have raised, in her Opposition to Motion to Enforce Supreme Court's Order dated
4 May 25, 2017; Motion to Hold Lynita S. Nelson in Contempt for Violation of September 22, 2014;
5 and for Attorneys' Fees and Costs; and Countermotion for Final Judgment Consistent with Nevada
6 Supreme Court's Remand previously filed on July 31, 2017 (hereinafter referred to as
7 "Opposition") and Reply to Countermotion for Final Judgment Consistent with Nevada Supreme
8 Court's Remand previously filed on August 22, 2017 (hereinafter referred to as "Reply to
9 Countermotion"). Indeed, this is not one of those "rare circumstances" in which reconsideration is
10 appropriate, and to do so would be an abuse of discretion.

11 As indicated *supra*, Lynita's Counsel has granted an extension to the ELN Trust until
12 Thursday, May 24, 2018, to file its Opposition; however, in the interim (and in light of the fact that
13 an Ex Parte Application to have the Motion for Reconsideration heard on OST is currently pending
14 before this Court), the ELN Trust hereby briefly responds to Lynita's arguments as follows.

15 **II. LEGAL ARGUMENT**

16 A. THIS COURT FOLLOWED THE SUPREME COURT'S DIRECTIVE BY
17 ORDERING THAT THE TRACING BEGIN ON MAY 30, 2001.

18 As indicated *supra*, Lynita's request that the tracing begin on July 13, 1993 is identical to
19 the arguments raised in her Opposition and Reply to Countermotion, and as such, Nevada law
20 requires that the Motion for Reconsideration be denied. As this Court recognized in its Decision
21 entered on April 19, 2018:

22 The Nevada Supreme Court held that both the ELN and LST Trusts
23 were funded with separate property stemming from the Separate
24 Property Agreement. As such, the proper date to begin the tracing
25 would be May 30, 2001, the date both the ELN and LSN Trusts were
executed. *See* Order at 3:10-14.¹

26 ¹ While the ELN Trust concedes that the tracing should begin on May 30, 2001, it adamantly
27 objects to a tracing being conducted on Wyoming Downs for the reasons set forth in its Reply to
28 Opposition to Motion to Enforce Supreme Court's Order dated May 25, 2017; Motion to Hold
Lynita in Contempt for Violation of September 22, 2014 Order; and for Attorneys' Fees and Costs
previously filed on August 4, 2017, at 8:24-10:2.

1 Upon information and belief, this Court's ruling was based upon the following statements
2 made by the Nevada Supreme Court in its Order:

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

6 In 2001, Eric and Lynita converted their separate property trusts into
7 Eric's Trust and Lynita's Trust, respectively, and funded the SSSTs
8 with the separate property contained within the separate property
9 trusts. P. 4.

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

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

16 Although unclear, in addition to re-making the exact same arguments previously rejected
17 by this Court, it also appears that Lynita is requesting that this Court essentially "second guess" the
18 Nevada Supreme Court's Order, which is inappropriate and inconsistent with Nevada law because
19 the Nevada Supreme Court's Order became the law of the case. *See e.g., Bd. Of Gallery of*
20 *History, Inc. v. Datecs Corp.*, 116 Nev. 289, 994 P.2d 1149, 1150 (2000) (when the law of the case
21 doctrine applies, "the district court [is] without authority to make a contrary finding."). Indeed, if
22 there was any confusion regarding the Supreme Court's directives then Lynita had a duty to file a
23 petition for rehearing pursuant to NRAP 40, yet she failed to do so.

24 Because Lynita failed to raise any new issues of fact or law regarding this issue (and/or
25 Lynita is trying to "dress-up" its other arguments that failed), this is not one of the "rare
26 circumstances" identified by the Nevada Supreme Court where a rehearing and/or reconsideration
27 should be granted.

28 B. LYNITA HAS FAILED TO RAISE NEW ISSUES OF FACT OR LAW AS TO
WHY IT IS NECESSARY FOR THE \$720,000 TO BE TRANSFERRED TO A
NEW BLOCKED ACCOUNT.

It is unnecessary for the \$720,000 to be placed in a blocked account because this Court
found in its decision that both the ELN Trust and the LSN Trusts possess "sufficient assets...to

SRAPP000428

1 offset any deficiency once a final balance and distribution amount has been determined.” See
2 Order at 7:26-8:2. Lynita has failed to raise any new issues of fact or law regarding this issue. As
3 such, the requested relief should be denied.

4 Because Lynita failed to raise any new issues of fact or law regarding this issue, this is not
5 one of the “rare circumstances” identified by the Nevada Supreme Court where a rehearing and/or
6 reconsideration should be granted.

7 C. LYNITA HAS FAILED TO RAISE NEW ISSUES OF FACT OR LAW
8 REGARDING THE IMPOSITION OF A JPI.

9 Contrary to Lynita’s contention, the ELN Trust believes that this Court implicitly dealt with
10 the JPI issue by finding that both the ELN Trust and the LSN Trusts possess “sufficient assets...to
11 offset any deficiency once a final balance and distribution amount has been determined.” See
12 Order at 7:26-8:2. Since there are sufficient assets to offset any deficiency, it would be manifestly
13 unjust to enter a JPI.

14 Notwithstanding, if this Court believes that it inadvertently failed to rule on Lynita’s
15 request for a JPI, said request should be denied because EDCR 5.85 only applies to the husband
16 and wife in a divorce proceeding,² of which the ELN Trust is not. Consequently, if Lynita wishes
17 to pursue an injunction against the ELN Trust she will need to seek a formal injunction that
18 complies with NRCP 65.

19 Further, if the Court is inclined to enter a JPI over property which either party deems
20 “community property,” said JPI cannot and should not apply to Wyoming Downs because: (1) this
21 Court previously found that Wyoming Downs was not community property; and (2) the Supreme
22 Court upheld the September 22, 2014 Order that disposed of said asset. Specifically, as this Court
23 will certainly recall, the Divorce Decree disposed of all of the assets owned by the ELN Trust and
24 the LSN Trust, with the exception of Wyoming Downs. After a separate evidentiary hearing on
25 Wyoming Downs on May 30, 2014, this Court entered the following findings and orders:

26 THE COURT FURTHER FINDS that although Wyoming Downs

27
28 ² Indeed, whenever the term “party” or “parties” is referenced in Part V of the Eighth Judicial
Court Rules it contemplates application to a husband and wife, and not to third parties.

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

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

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

12 Whether the district court erred in denying Lynita a one-half (1/2)
13 interest in Wyoming Downs, which was purchased during the
14 pendency of Eric's and Lynita's divorce proceedings. *See* LSN
15 Trust's Docketing Statement at 4:10-12.³

15 In its Opinion, the Nevada Supreme Court upheld, as opposed to overturned, the September 22,
16 2014 Order:

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

20 Further, and perhaps most importantly, footnote 9 provides: "[w]e have considered the parties'
21 other arguments [which would have included Lynita's argument with respect to Wyoming Downs]
22 and conclude they are without merit." In light of the foregoing, it would be an error to enter a JPI
23 and/or litigate any issue, which would include conducting a tracing on Wyoming Downs.

24 D. BRIAN HEAD CABIN.

25 Lynita's requested relief regarding the Brian Head Cabin stems from an oral request made
26 by her Counsel at the January 31, 2018, which admittedly was not briefed in the underlying
27 pleadings. It is inappropriate for this Court to tailor its Order to further Lynita's best interest

28 ³ *See also* Lynita's Answering Brief and Opening Brief on Cross-Appeal at pp. 52-53.

1 without giving the Parties the opportunity to respond to the same. For this reason, Lynita's
2 requested relief should be denied.

3 **III. CONCLUSION**

4 As indicated *supra*, this is not one of the "rare circumstances" where a rehearing and/or
5 reconsideration should be granted. To the contrary, the majority (if not all) of the arguments made
6 in Lynita's Motion for Reconsideration were identical to the arguments that she made at the prior
7 hearings and considered by this Court when it entered its Order.

8 As stated above, Lynita's Counsel has granted an extension to the ELN Trust until
9 Thursday, May 24, 2018, to file its Opposition, and as such, the ELN Trust intends to supplement
10 its Opposition if necessary.

11 DATED this 21st day of May, 2018.

12 SOLOMON DWIGGINS & FREER, LTD.

13
14 By: 

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18 *Attorneys for Matt Klabacka, Distribution*
19 *Trustee of the ERIC L. NELSON NEVADA*
20 *TRUST dated May 30, 2001*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, pursuant to NRCP 5(b), that on May 21, 2018, I served a true and correct copy of the foregoing **INITIAL OPPOSITION TO LYNITA NELSON'S MOTION FOR RECONSIDERATION AND CLARIFICATION OF THE COURT'S DECISION ENTERED APRIL 19, 2018; COUNTERPETITION TO REMOVE LIS PENDENS INAPPROPRIATELY FILED BY THE LSN TRUST; AND FOR ATTORNEYS' FEES AND COSTS**, to the following in the manner set forth below:

<input type="checkbox"/>	Hand Delivery
<input type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Certified Mail, Receipt No.: _____
<input type="checkbox"/>	Return Receipt Request
<input checked="" type="checkbox"/>	E-Service through Wiznet

DICKERSON LAW GROUP
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Las Vegas, NV 89134

Attorneys for Defendant

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

Attorneys for Plaintiff


An Employee of SOLOMON DWIGGINS & FREER, LTD.

SRAPP000432

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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ERIC L. NELSON

Plaintiff/Petitioner

v.

LYNITA SUE NELSON

Defendant/Respondent

Case No. D-09-411537-D

Dept. O

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

<input checked="" type="checkbox"/> \$25	The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-	
<input type="checkbox"/> \$0	The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
<input type="checkbox"/>	The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
<input type="checkbox"/>	The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
<input type="checkbox"/>	The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
<input type="checkbox"/>	Other Excluded Motion (must specify) _____.

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

<input checked="" type="checkbox"/> \$0	The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
<input checked="" type="checkbox"/>	The Motion/Opposition is being filed in a case that was not initiated by joint petition.
<input type="checkbox"/>	The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
-OR-	
<input type="checkbox"/> \$129	The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
-OR-	
<input type="checkbox"/> \$57	The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

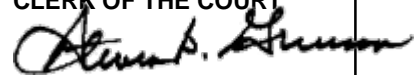
The total filing fee for the motion/opposition I am filing with this form is:

☐ \$0 ☒ \$25 ☐ \$57 ☐ \$82 ☐ \$129 ☐ \$154

Party filing Motion/Opposition: Matthew Klabacka Date 05/21/18

Signature of Party or Preparer /s/ Gretta G. McCall

SRAPP000433



DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff,

v.

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

Defendants.

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

Cross-claimant,

v.

LYNITA SUE NELSON,

Cross-defendant.

Case No.: D-09-411537-D

Dept. No.: O

**DECISION AFFIRMING THE DATE OF TRACING; DENYING A
SEPARATE BLOCKED ACCOUNT FOR \$720,000; AND GRANTING A
JOINT PRELIMINARY INJUNCTION FOR THE BANONE, LLC. AND
LINDELL PROPERTIES**

This matter was before the Court, pursuant to Lynita Nelson's Motion for Reconsideration and Clarification of the Court's Decision Entered April 19, 2018, and Lynita Nelson's Ex Parte Motion for Issuance of Joint Preliminary

1
2 Injunction. The Court, having reviewed all Motions, based thereon and good
3 cause appearing therefor:

4
5 **CONCLUSIONS OF LAW**

6 A. May 30, 2001 is the Proper Date To Begin the Tracing Because the Nevada
7 Supreme Court Found and Held That the ELN and LSN Trusts Were
8 Funded With Separate Property

9 In its May 25, 2017 Order, the Nevada Supreme Court concluded that this
10 Court erred by “not tracing the assets contained within the trusts, either through a
11 reliable expert or other available means.”¹ The Nevada Supreme Court also held
12 that both the Eric L. Nelson Nevada Trust (“ELN Trust”) and the Lynita S.
13 Nelson Nevada Trust (“LSN Trust”) “are valid and the trusts were funded with
14 separate property stemming from a valid separate property agreement.”²

15
16 In its April 19, 2018 Order, this Court did not address the tracing
17 performed in the underlying divorce proceeding. During the divorce proceeding,
18 this Court did not perform a tracing of assets contained within either the Eric L.
19 Nelson Nevada Trust (“ELN Trust”) or the Lynita S. Nelson Nevada Trust (“LSN
20 Trust”). In its May 25, 2017 Order, the Nevada Supreme Court found that “[i]n
21 2001, Eric and Lynita converted their separate property trusts into Eric’s Trust
22 and Lynita’s Trust, respectively, and funded the SSST’s with the separate
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28 ¹ Klabacka v. Nelson, 394 P.3d 940, 948 (Nev. 2017).

² Klabacka, 394 at 947.

1
2 property contained within the separate property trusts.”³ The Nevada Supreme
3 Court then held that both the ELN and LSN Trusts were funded with separate
4 property based on their findings.⁴
5

6 While this Court never performed a tracing of assets in the trusts in the
7 underlying divorce proceedings, the Nevada Supreme Court held that “the SSSTs
8 are valid and the trusts were funded with separate property stemming from a
9 valid separate property agreement.”⁵ Therefore, based upon the Nevada Supreme
10 Court’s finding and holding, this Court interprets the proper date to begin tracing
11 as May 30, 2001, the date on which both the ELN and LSN Trusts were executed.
12
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14 B. The \$720,000 Released to the ELN Trust Is A Valid Disbursement As the
15 Funds Were Allocated In Error

16 In its May 25, 2017 Order, the Nevada Supreme Court found that this
17 Court erred in Ordering the ELN Trust to pay the personal obligations of Mr.
18 Nelson with regard to a lump-sum alimony payment.⁶ In response to the Nevada
19 Supreme Court’s holding, this Court Ordered the return of the \$720,000 which
20 was paid by the ELN Trust and being held in a blocked account.
21
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23 The sole purpose of the disbursement of the \$720,000 was for the payment
24 of Mr. Nelson’s personal obligations. Otherwise, the funds would have remained
25 within the ELN Trust and be afforded all the protections of a Nevada Trust. As
26

27 ³ *Id.* at 943.

⁴ *Id.* at 947.

⁵ *Id.*

⁶ Klabacka v. Nelson, 394 P.3d 940, 952 (Nev. 2017).
28

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2 this Court erred when Ordering the distribution of funds from the ELN Trust to
3 pay for Mr. Nelson's personal obligations, the Court is obligated to return the
4 funds from the source of the distribution, the ELN Trust. Therefore, transferring
5 the funds from one blocked account to a separate frozen account is improper at
6 this time.
7

8
9 C. A Joint Preliminary Injunction for the Banone, LLC. and Lindell
10 Properties is Appropriate Because Both Properties Are Involved In A
11 Claim of Community Property

12 In its April 19, 2018 Order, this Court did not address the request for a
13 Joint Preliminary Injunction for the Banone, LLC. and Lindell Properties. Eighth
14 Judicial District Court Rule 5.517 states that "[u]pon the request of any party at
15 any time prior to the entry of...final judgment, a preliminary injunction will be
16 issued by the clerk against the parties to the action enjoining them and their
17 officers, agents, servant, employees, or a person in active concert or participation
18 with them from: transferring, encumbering, concealing, selling, or otherwise
19 disposing of...any property that is the subject of a claim of community
20 interest..."
21

22 Both the Banone, LLC. and Lindell Properties are subject to a claim of
23 community interest. As such, both properties are entitled to a Joint Preliminary
24 Injunction to ensure that the properties remain intact prior to the completion of
25 tracing and the final judgment of this Court. However, while this Court is aware
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2 that multiple Notices of Lis Pendens regarding both properties have been filed, a
3 Joint Preliminary Injunction on the properties is appropriate and will be granted.
4 Furthermore, considering the extensive litigation costs incurred to date, this Court
5 is issuing this decision prior to any Opposition being filed by Mr. Nelson or the
6 ELN Trust and any Reply by Ms. Nelson. Therefore, any potential Oppositions
7 and Reply will be reviewed and addressed accordingly as they are filed.
8
9

10 D. Any Funds Used to Purchase the Brian Head Property That Are
11 Considered Community Property Will Be Reimbursed Following the
12 Tracing of Assets in the ELN and LSN Trusts

13 In its April 19, 2018 Order, this Court stated any financial transfers or
14 inequities found as a result of the tracing of assets would be settled after tracing
15 has been completed and the Court issues a final judgment. This Court also stated
16 that both the ELN and LSN Trusts have sufficient assets to offset any
17 deficiencies ultimately found once a final balance and distribution amount has
18 been determined. Therefore, in the event that the tracing finds that a share of
19 LSN's property held within the ELN Trust was used to purchase the 50% interest
20 in the Brian Head Cabin, the LSN Trust will be entitled to a reimbursement of
21 said property.
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1
2 E. The June 5, 2018 Hearing Shall Be Vacated Based On This Court's
3 Decision

4 As a result of Motions filed in this case, a Motion Hearing was set on this
5 Court's calendar for June 5, 2018. As a result of this Decision, the June 5, 2018
6 Motion Hearing is hereby Vacated.
7

8 **ORDER**

9 Based thereon:

10 **IT IS HEREBY ORDERED** the this Court's decision to start the tracing
11 of assets within the Eric L. Nelson Nevada Trust and the Lynita S. Nelson
12 Nevada Trust on May 30, 2001 is hereby **AFFIRMED**.
13

14 **IT IS FURTHER ORDERED** that the release of the \$720,000 from Bank
15 of Nevada Blocked Account #7502338705 to the ELN Trust is hereby
16 **AFFIRMED**.
17

18 **IT IS FURTHER ORDERED** that the request to transfer the \$720,000
19 from the Blocked Account into a separate frozen account is hereby **DENIED**.
20

21 **IT IS FURTHER ORDERED** that the request for a Joint Preliminary
22 Injunction on the Banone, LLC. and Lindell Properties to prevent the transfer,
23 encumbrance, concealment, sale, or otherwise disposition of the properties is
24 hereby **GRANTED**.
25


26 **IT IS FURTHER ORDERED** that in the event that a complete tracing of
27 assets finds that the Eric L. Nelson Nevada Trust's purchase of the 50% interest
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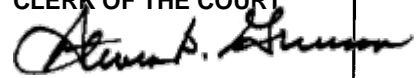
in the Brian Head Utah Cabin is made with community property, the Lynita S. Nelson Nevada Trust is entitled to a reimbursement in the amount of the proceeds determined to be Lynita Nelson's portion of the community property used for purchase.

IT IS FURTHER ORDERED that any Stay of Order is hereby **DENIED**.

DATED this 22nd day of May, 2018.



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



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

ERIC L. NELSON,

Plaintiff,

v.

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

Defendants.

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

Cross-claimant,

v.

LYNITA SUE NELSON,

Cross-defendant.

Case No.: D-09-411537-D

Dept. No.: O

NOTICE OF ENTRY OF ORDER

TO:


Rhonda Forsberg, Esq.
E-Service

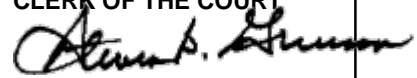
Robert Dickerson, Esq.
E-Service

Marc Solomon, Esq.
E-Service

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2 PLEASE TAKE NOTICE that the DECISION AFFIRMING THE DATE OF
3 TRACING; DENYING A SEPARATE BLOCKED ACCOUNT FOR \$720,000; AND
4 GRANTING A JOINT PRELIMINARY INJUNCTION FOR THE BANONE, LLC. AND
5 LINDELL PROPERTIES was duly entered in the above-referenced case on the 22nd day of
6 May, 2018.
7

8 DATED this 22 day of May, 2018.

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10 _____
11 Lori Parr
12 Judicial Executive Assistant
13 Dept. O
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DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff,

v.

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

Defendants.

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

Cross-claimant,

v.

LYNITA SUE NELSON,

Cross-defendant.

Case No.: D-09-411537-D

Dept. No.: O

**DECISION AFFIRMING THE DATE OF TRACING; DENYING A
SEPARATE BLOCKED ACCOUNT FOR \$720,000; AND GRANTING A
JOINT PRELIMINARY INJUNCTION FOR THE BANONE, LLC. AND
LINDELL PROPERTIES**

This matter was before the Court, pursuant to Lynita Nelson's Motion for Reconsideration and Clarification of the Court's Decision Entered April 19, 2018, and Lynita Nelson's Ex Parte Motion for Issuance of Joint Preliminary

SRAPP000443

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2 Injunction. The Court, having reviewed all Motions, based thereon and good
3 cause appearing therefor:

4
5 **CONCLUSIONS OF LAW**

6 A. May 30, 2001 is the Proper Date To Begin the Tracing Because the Nevada
7 Supreme Court Found and Held That the ELN and LSN Trusts Were
8 Funded With Separate Property

9 In its May 25, 2017 Order, the Nevada Supreme Court concluded that this
10 Court erred by “not tracing the assets contained within the trusts, either through a
11 reliable expert or other available means.”¹ The Nevada Supreme Court also held
12 that both the Eric L. Nelson Nevada Trust (“ELN Trust”) and the Lynita S.
13 Nelson Nevada Trust (“LSN Trust”) “are valid and the trusts were funded with
14 separate property stemming from a valid separate property agreement.”²

15
16 In its April 19, 2018 Order, this Court did not address the tracing
17 performed in the underlying divorce proceeding. During the divorce proceeding,
18 this Court did not perform a tracing of assets contained within either the Eric L.
19 Nelson Nevada Trust (“ELN Trust”) or the Lynita S. Nelson Nevada Trust (“LSN
20 Trust”). In its May 25, 2017 Order, the Nevada Supreme Court found that “[i]n
21 2001, Eric and Lynita converted their separate property trusts into Eric’s Trust
22 and Lynita’s Trust, respectively, and funded the SSST’s with the separate
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28 ¹ Klabacka v. Nelson, 394 P.3d 940, 948 (Nev. 2017).

² Klabacka, 394 at 947.

1
2 property contained within the separate property trusts.”³ The Nevada Supreme
3 Court then held that both the ELN and LSN Trusts were funded with separate
4 property based on their findings.⁴
5

6 While this Court never performed a tracing of assets in the trusts in the
7 underlying divorce proceedings, the Nevada Supreme Court held that “the SSSTs
8 are valid and the trusts were funded with separate property stemming from a
9 valid separate property agreement.”⁵ Therefore, based upon the Nevada Supreme
10 Court’s finding and holding, this Court interprets the proper date to begin tracing
11 as May 30, 2001, the date on which both the ELN and LSN Trusts were executed.
12
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14 B. The \$720,000 Released to the ELN Trust Is A Valid Disbursement As the
15 Funds Were Allocated In Error

16 In its May 25, 2017 Order, the Nevada Supreme Court found that this
17 Court erred in Ordering the ELN Trust to pay the personal obligations of Mr.
18 Nelson with regard to a lump-sum alimony payment.⁶ In response to the Nevada
19 Supreme Court’s holding, this Court Ordered the return of the \$720,000 which
20 was paid by the ELN Trust and being held in a blocked account.
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23 The sole purpose of the disbursement of the \$720,000 was for the payment
24 of Mr. Nelson’s personal obligations. Otherwise, the funds would have remained
25 within the ELN Trust and be afforded all the protections of a Nevada Trust. As
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27 ³ *Id.* at 943.

⁴ *Id.* at 947.

⁵ *Id.*

⁶ Klabacka v. Nelson, 394 P.3d 940, 952 (Nev. 2017).

1
2 this Court erred when Ordering the distribution of funds from the ELN Trust to
3 pay for Mr. Nelson's personal obligations, the Court is obligated to return the
4 funds from the source of the distribution, the ELN Trust. Therefore, transferring
5 the funds from one blocked account to a separate frozen account is improper at
6 this time.
7

8
9 C. A Joint Preliminary Injunction for the Banone, LLC. and Lindell
10 Properties is Appropriate Because Both Properties Are Involved In A
11 Claim of Community Property

12 In its April 19, 2018 Order, this Court did not address the request for a
13 Joint Preliminary Injunction for the Banone, LLC. and Lindell Properties. Eighth
14 Judicial District Court Rule 5.517 states that "[u]pon the request of any party at
15 any time prior to the entry of...final judgment, a preliminary injunction will be
16 issued by the clerk against the parties to the action enjoining them and their
17 officers, agents, servant, employees, or a person in active concert or participation
18 with them from: transferring, encumbering, concealing, selling, or otherwise
19 disposing of...any property that is the subject of a claim of community
20 interest..."
21

22 Both the Banone, LLC. and Lindell Properties are subject to a claim of
23 community interest. As such, both properties are entitled to a Joint Preliminary
24 Injunction to ensure that the properties remain intact prior to the completion of
25 tracing and the final judgment of this Court. However, while this Court is aware
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2 that multiple Notices of Lis Pendens regarding both properties have been filed, a
3 Joint Preliminary Injunction on the properties is appropriate and will be granted.
4 Furthermore, considering the extensive litigation costs incurred to date, this Court
5 is issuing this decision prior to any Opposition being filed by Mr. Nelson or the
6 ELN Trust and any Reply by Ms. Nelson. Therefore, any potential Oppositions
7 and Reply will be reviewed and addressed accordingly as they are filed.
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10 D. Any Funds Used to Purchase the Brian Head Property That Are
11 Considered Community Property Will Be Reimbursed Following the
12 Tracing of Assets in the ELN and LSN Trusts

13 In its April 19, 2018 Order, this Court stated any financial transfers or
14 inequities found as a result of the tracing of assets would be settled after tracing
15 has been completed and the Court issues a final judgment. This Court also stated
16 that both the ELN and LSN Trusts have sufficient assets to offset any
17 deficiencies ultimately found once a final balance and distribution amount has
18 been determined. Therefore, in the event that the tracing finds that a share of
19 LSN's property held within the ELN Trust was used to purchase the 50% interest
20 in the Brian Head Cabin, the LSN Trust will be entitled to a reimbursement of
21 said property.
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2 E. The June 5, 2018 Hearing Shall Be Vacated Based On This Court's
3 Decision

4 As a result of Motions filed in this case, a Motion Hearing was set on this
5 Court's calendar for June 5, 2018. As a result of this Decision, the June 5, 2018
6 Motion Hearing is hereby Vacated.
7

8 **ORDER**

9 Based thereon:

10 **IT IS HEREBY ORDERED** the this Court's decision to start the tracing
11 of assets within the Eric L. Nelson Nevada Trust and the Lynita S. Nelson
12 Nevada Trust on May 30, 2001 is hereby **AFFIRMED**.
13

14 **IT IS FURTHER ORDERED** that the release of the \$720,000 from Bank
15 of Nevada Blocked Account #7502338705 to the ELN Trust is hereby
16 **AFFIRMED**.
17

18 **IT IS FURTHER ORDERED** that the request to transfer the \$720,000
19 from the Blocked Account into a separate frozen account is hereby **DENIED**.
20

21 **IT IS FURTHER ORDERED** that the request for a Joint Preliminary
22 Injunction on the Banone, LLC. and Lindell Properties to prevent the transfer,
23 encumbrance, concealment, sale, or otherwise disposition of the properties is
24 hereby **GRANTED**.
25

26 **IT IS FURTHER ORDERED** that in the event that a complete tracing of
27 assets finds that the Eric L. Nelson Nevada Trust's purchase of the 50% interest
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SRAPP000448

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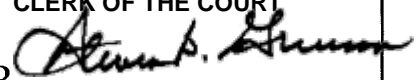
in the Brian Head Utah Cabin is made with community property, the Lynita S. Nelson Nevada Trust is entitled to a reimbursement in the amount of the proceeds determined to be Lynita Nelson's portion of the community property used for purchase.

IT IS FURTHER ORDERED that any Stay of Order is hereby **DENIED**.

DATED this 22nd day of May, 2018.



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



MRCN
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Attorneys for Lynita Sue Nelson

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,

v.

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

Defendants/Counterclaimants.

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

Date of Hearing:
Time of Hearing:

ORAL ARGUMENT
REQUESTED: NO

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

Crossclaimant,

v.

LYNITA SUE NELSON, Individually
and as Investment Trustee of the LSN
NEVADA TRUST, dated
May 30, 2001, and ERIC NELSON,

Cross-Defendant.

SRAPP000450

1 NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS
2 MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE
3 UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10)
4 DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A
5 WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN
6 (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE
7 REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT
8 HEARING PRIOR TO THE SCHEDULED HEARING DATE.

9 **LYNITA NELSON'S MOTION FOR RECONSIDERATION AND**
10 **CLARIFICATION OF THE COURT'S DECISION**
11 **ENTERED MAY 22, 2018**

12 COMES NOW, Defendant and Cross-Defendant, LYNITA SUE
13 NELSON ("Lynita"), by and through her counsel, ROBERT P.
14 DICKERSON, ESQ., and JOSEF M. KARACSONYI, ESQ., of THE
15 DICKERSON KARACSONYI LAW GROUP, and respectfully submits for
16 the Court's consideration her Motion for Reconsideration and
17 Clarification of the Court's Decision Entered May 22, 2018 ("Motion").

18 Specifically, Lynita respectfully requests the following relief:


19 1. That the Court reconsider its Decision entered May 22, 2018,
20 and Order that the Joint Preliminary Injunction issued is not limited to
21 the Banone, LLC and Lindell Properties; and

22 2. For such further relief as deemed appropriate in the premises.

23 This Motion is made and based upon the pleadings and papers on
24 file herein, and the Memorandum of Points and Authorities attached
25 hereto.

26 DATED this 5th day of June, 2018.

27 THE DICKERSON KARACSONYI
28 LAW GROUP


ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
1745 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Lynita Sue Nelson

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. FACTUAL STATEMENT

3 This matter was recently before the Court pursuant to Lynita's
4 Motion for Reconsideration and Clarification of the Court's Decision
5 Entered April 19, 2018 ("Motion"), and Lynita's Ex Parte Motion for
6 Issuance of Joint Preliminary Injunction. Having reviewed all such
7 documents, and based thereon and good cause appearing therefor, on May
8 22, 2018, the Court issued its Decision Affirming the Date of Tracing;
9 Denying A Separate Blocked Account for \$720,000; and Granting a Joint
10 Preliminary Injunction for the Banone, LLC and Lindell Properties
11 ("Decision").

12 As part of the Court's Decision, the Court noted that in its prior
13 April 19, 2018 Order, "this Court did not address the request for a Joint
14 Preliminary Injunction for the Banone, LLC. and Lindell properties." In
15 reality, however, Lynita's request that was before the Court during the
16 prior hearing of January 31, 2018, and which was the subject of the April
17 19, 2018 Order, was that a general Joint Preliminary Injunction be issued,
18 and not one related only to the Banone, LLC, and Lindell Properties.

19 The legal justification provided by the Court for the issuance of the
20 limited Joint Preliminary Injunction is as follows:

21 Both the Banone, LLC. and Lindell Properties are subject to a
22 claim of community interest. As such, both properties are
23 entitled to a Joint Preliminary Injunction to ensure that the
properties remain intact prior to the completion of tracing and
the final judgment of this Court.

24 Decision, page 4.

25 As this Court is aware, however, there are numerous other properties
26 at issue in the parties' divorce action which are similarly the subject of a
27 claim of community interest. Lynita requests – as she did in her prior
28 Motions – that a general Joint Preliminary Injunction be issued in this

1 matter. Lynita asks that the Court make clear that none of the assets
2 subject to a claim of community property can be transferred, encumbered,
3 concealed, sold, or other disposed of by the parties pending the
4 finalization of the Court's tracing and entry of the Court's final Order. As
5 the Court will recall, in making an equal division of the parties' property
6 in the Decree of Divorce entered June 3, 2013, Lynita was also awarded
7 one-third (1/3) of Russell Road from the ELN Trust at a value of
8 \$2,265,113.50. An injunction over just the Banone, LLC and Lindell
9 Properties does not protect sufficient property to ensure the Court can
10 accomplish an appropriate division of property if it is determined that the
11 properties held in ELN Trust and LSN Trust are community property.

12 **II. LEGAL ANALYSIS**

13 A. The Court Should Reconsider/Clarify The Scope Of The Joint 14 Preliminary Injunction Issued As Part Of Its Decision of May 22, 2018

15 Nevada Rules of Civil Procedure, Rule 60 (2018), provides in
16 pertinent part as follows:

17 (a) Clerical Mistakes. Clerical mistakes in judgments, orders
18 or other parts of the record and errors therein arising from
19 oversight or omission may be corrected by the court at any
20 time of its own initiative or on the motion of any party and
21 after such notice, if any, as the court orders. During the
pendency of an appeal, such mistakes may be so corrected
before the appeal is docketed in the appellate court, and
thereafter while the appeal is pending may be so corrected with
leave of the appellate court.

22 In addition, Eighth Judicial District Court Rules, Rule 5.512 (2018),
23 provides as follows:

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

28 . . .

1 (b) If a motion for reconsideration and/or rehearing is
2 granted, the court may make a final disposition without
3 hearing, may set it for hearing or resubmission, or may make
such other orders as are deemed appropriate under the
circumstance.

4 Finally, NRCP 59(e) provides the trial court the opportunity, within a
5 limited time, to rehear a motion previously brought before it, and to
6 correct or reconsider its order or judgment. *Chiara v. Belaustegui*, 86 Nev.
7 856, 859, 477 P.2d 857, 858 (1970). “[A] court may, for sufficient cause
8 shown, amend, correct, resettle, modify, or vacate, as the case may be, an
9 order previously made and entered on motion in the progress of the cause
10 or proceeding.” *Trail v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026, 1027
11 (1975).

12 B. The Court Should Immediately Enter A Joint Preliminary Injunction
13 In This Matter Over All Property Listed In The Decree Of Divorce

14 EDCR 5.517 requires the issuance of a joint preliminary injunction
15 upon the request of any party, to prohibit all parties, and “their officers,
16 agents, servants, employees, or a person in active concert or participation
17 with them from: (1) Transferring, encumbering, concealing, selling, or
18 otherwise disposing of any of the joint, common, or community property
19 of the parties or any property that is subject of a claim of community
20 interest, except in the usual course of conduct or for the necessities of life
21 or for retention of counsel. . . .” Emphasis added. NRS 125.050 requires
22 the Court to “make such restraining order or other order as appears
23 necessary to prevent the act or conduct and preserve the status quo
24 pending final determination of the cause.”

25 Based on the above, as well as the arguments and statements made
26 during the hearing of January 31, 2018, Lynita respectfully requests that
27 this Court enter a Joint Preliminary Injunction in this matter providing:

28 . . .

1 IT IS HEREBY ORDERED that no property listed in the
2 Decree of Divorce entered June 3, 2013, is to be transferred,
3 encumbered, concealed, sold, or otherwise disposed of without
4 a written agreement between the parties or further Order of
the Court to ensure that the properties remain intact prior to
the completion of the tracing and the final judgment of this
Court.

5 If the Court is not willing to enjoin all potential community property
6 at issue in this matter, it should, at the very least, issue an Order to Eric
7 and the ELN Trust providing:

8 IT IS HEREBY ORDERED that no property held by Eric or
9 the ELN Trust which was awarded to Lynita in the Decree of
10 Divorce entered June 3, 2013, is to be transferred,
11 encumbered, concealed, sold, or otherwise disposed of without
12 a written agreement between the parties or further Order of
the Court to ensure that the properties remain intact prior to
the completion of the tracing and the final judgment of this
Court.


13 Based on the above, as well as the arguments and statements made
14 during the hearing of January 31, 2018, Lynita respectfully requests that
15 this Court enter a Joint Preliminary Injunction in this matter as set forth
16 herein.

17 **III. CONCLUSION**

18 Based upon the foregoing, Lynita respectfully requests that the Court
19 reconsider its Decision entered May 22, 2018, and Order that the Joint
20 Preliminary Injunction issued is not limited to the Banone, LLC and
21 Lindell Properties.

22 DATED this 5th day of June, 2018.

23 THE DICKERSON KARACSONYI
24 LAW GROUP

25 
26 ROBERT P. DICKERSON, ESQ.
27 Nevada Bar No. 000945
28 JOSEF M. KARACSONYI, ESQ.
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Attorneys for Defendant

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of THE DICKERSON KARACSONYI LAW GROUP, and that on this 5th day of June, 2018, I caused the document entitled, LYNITA NELSON’S MOTION FOR RECONSIDERATION AND CLARIFICATION OF THE COURT’S DECISION ENTERED MAY 22, 2018 to be served as follows:

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

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

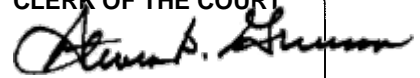
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9 Attorneys for Distribution Trustee of the ELN Trust

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An employee of The Dickerson Karacsonyi Law Group



OPPS

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

DISTRICT COURT

COUNTY OF CLARK, NEVADA

ERIC L. NELSON,

Plaintiff

vs.

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

Defendants.

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

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

Case No.: D-09-411537-D

Dept. No.: O

**OPPOSITION TO LYNITA
NELSON'S MOTION FOR
RECONSIDERATION AND
CLARIFICATION OF THE
COURT'S DECISION ENTERED
MAY 22, 2018; AND
COUNTERMOTION TO: (1)
TERMINATE THE JPI; (2) IMPOSE
A BOND ON ANY PROPERTY
SUBJECT TO THE JPI; (3)
EXPUNGE THE
INAPPROPRIATELY RECORDED
LIS PENDENS; (4) ALLOW THE
ELN TRUST TO MANAGE
LINDELL; AND (5) ATTORNEYS'
FEES AND COSTS**

**HEARING DATE: July 10, 2018
HEARING TIME: 9:30 a.m.**

Matt Klabacka, Distribution Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001, hereby files his Opposition to Lynita Nelson's Motion
for Reconsideration and Clarification of the Court's Decision Entered May 22, 2018;

1 and his Countermotion: (1) to Terminate the JPI; (2) Impose a Bond on any Property
2 Subject to the JPI; (3) Expunge the Inappropriately Recorded Lis Pendens; (4) Allow
3 the ELN Trust to Manage Lindell; and (5) for Attorneys' Fees and Costs.
4

5 DATED this 22nd day of June, 2018.

6 SOLOMON DWIGGINS & FREER, LTD.

7
8 By: 

9 MARK A. SOLOMON, ESQ.
10 Nevada State Bar No. 0418
11 JEFFREY P. LUSZECK, ESQ.
12 Nevada State Bar No. 9619
13 9060 West Cheyenne Avenue
14 Las Vegas, Nevada 89129

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND STATEMENT OF FACTS

"If at first you don't succeed try, try again."

Lynita S. Nelson has taken the aforementioned proverb to heart as this is the
third time that she has requested the exact same relief: a joint preliminary injunction
over all assets owned by the ELN Trust. Indeed, in her Motion (which merely
regurgitates the same arguments that this Court previously rejected in entering its
April 19, 2018 Order), Lynita fails to identify how the Court's Order entered on May
22, 2018 ("May 22 Order") is clearly erroneous and or how new facts would support
a reversal of this Court's decision. What makes Lynita's self-serving actions even
worse is that after this Court denied her requested relief, she filed lis pendens over

1 the majority, if not all, of the ELN Trust's real property (even property that was not
2 awarded to Lynita in Divorce Decree like Bella Kathryn). In light of the foregoing,
3 Lynita's Motion should be denied in its entirety and the ELN Trust should be
4 awarded its attorneys' fees and costs responding to the frivolous Motion.
5

6 Additionally, the ELN Trust countermoves this Court for an order: (1)
7 terminating the JPI; (2) compelling Lynita to post a bond on any property subject to
8 the JPI; (3) expunging the lis pendens; and (4) allowing the ELN Trust to manage
9 Lindell.
10

11 **II. LEGAL STANDARD**

12 A motion for reconsideration must be based on "substantially different
13 evidence [that] is subsequently introduced" showing that "the decision is clearly
14 erroneous." *Masonry and Tile Constrs. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737,
15 741, 941 P.2d 486, 489 (1997). "Only in very rare instances in which new issues of
16 fact or law are raised supporting a ruling contrary to the ruling already reached
17 should a motion for reconsideration be granted." *Moore v. City of Las Vegas*, 92
18 Nev. 402, 405, 551 P.2d 244, 246 (1976). Reconsideration motions cannot not be
19 used merely to reargue the arguments the movant already made to the Court, to "be
20 used to ask the Court to rethink what it has already thought," *Motorola, Inc. v. J.B.*
21 *Rodgers Mechanical Contractors*, 215 F.R.D. 581, 582 (D. Ariz. 2003), or "to dress
22 up arguments that previously failed." *Waddell & Reed Fin., Inc. v. Torchmark*
23 *Corp.*, 338 F. Supp. 2d 1248, 1250 (D. Kan. 2004) (citations omitted).
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Notwithstanding the aforementioned black letter law, in her Motion, Lynita advances the identical arguments that she previously raised, and/or could have raised, in her: (1) Opposition to Motion to Enforce Supreme Court's Order dated May 25, 2017; Motion to Hold Lynita S. Nelson in Contempt for Violation of September 22, 2014; and for Attorneys' Fees and Costs; and Countermotion for Final Judgment Consistent with Nevada Supreme Court's Remand previously filed on July 31, 2017 (hereinafter referred to as "Opposition"); (2) Reply to Countermotion for Final Judgment Consistent with Nevada Supreme Court's Remand previously filed on August 22, 2017 (hereinafter referred to as "Reply to Countermotion"); and (3) Lynita Nelson's Motion for Reconsideration and Clarification of the Court's Decision entered April 19, 2018 ("April 19 Order"). Indeed, this is not one of those "rare circumstances" in which reconsideration is appropriate, and to do so would be an abuse of discretion.

III. LEGAL ARGUMENT

A. THIS COURT ERRED BY IMPOSING A JOINT PRELIMINARY INJUNCTION ON THE BANONE, LLC AND LINDELL PROPERTIES.

As an initial matter, this Court erred by imposing a JPI over Banone, LLC and Lindell because EDCR 5.517 only applies to the husband and wife in a divorce proceeding,¹ of which the ELN Trust is not. Consequently, if Lynita wishes to

¹ Indeed, whenever the term "party" or "parties" is referenced in Part V of the Eighth Judicial Court Rules it contemplates application to a husband and wife, and not to third parties.

1 pursue an injunction against the ELN Trust she must seek a formal injunction that
2 complies with NRCP 65, including, but not limited to, posting security pursuant to
3 subsection (c). Requiring Lynita to post a security “for the payment of such costs
4 and damages as may be incurred or suffered by any party who is found to have been
5 wrongfully enjoined or restrained” is mandatory under NRCP 65, and is fair and
6 equitable as the ELN Trust has previously been required to post bond. Further, the
7 imposition of a JPI over Banone, LLC and Lindell does not make sense in light of
8 this Court’s finding that both the ELN Trust and the LSN Trust possess “sufficient
9 assets in both trusts to offset any deficiency once a final balance and distribution
10 amount has been determined.”² See April 19 Order at 7:26-8:2.

11
12 In light of the foregoing, the ELN Trust respectfully requests that this Court
13 reconsider the imposition of its JPI against Banone, LLC and Lindell without the
14 imposition of a bond.

15
16 B. THIS COURT SHOULD DENY LYNITA’S SELF-SERVING
17 ATTEMPT TO INCREASE THE SCOPE OF THE JPI.

18
19 Notwithstanding the foregoing, Lynita demands that this Court increase the
20 scope of the JPI to encompass “any property listed in the Decree of Divorce entered
21 June 3, 2013,” or at the very least, to include any property “held by Eric or, the ELN
22

23
24
25 ² The ELN Trust disagrees that the LSN Trust has sufficient assets to “offset any deficiency
26 once a final balance” has been determined because she has squandered the assets in the LSN Trust
27 and owes the ELN Trust hundreds of thousands of dollars for the following: (1) rents allocated from
28 both the Banone, LLC and Lindell Properties; (2) \$324,000 paid to Lynita from the Bank of Nevada
blocked account; (3) a \$6,050 security deposit paid to the LSN Trust from the ELN Trust; (4)
payments collected by the LSN Trust pursuant to the Farmouth Circle Note; and (5) \$75,000 paid to
the LSN Trust by Banone-AZ, LLC. See, e.g., April 19 Order at 7:11-18.

1 Trust which was awarded to Lynita in the Decree of Divorce entered June 3, 2013.”
2 Motion at 4:1-12. Once again, Lynita’s request ignores this Court’s finding that both
3 the ELN Trust and the LSN Trusts possess “sufficient assets in both trusts to offset
4 any deficiency once a final balance and distribution amount has been determined.”
5
6 See April 19 Order at 7:26-8:2.

7
8 1. THIS COURT SHOULD DENY LYNITA’S REQUEST TO
9 INCREASE THE SCOPE OF THE JPI TO ANY PROPERTY
10 IDENTIFIED IN THE DIVORCE DECREE.

11 Lynita’s request that this Court increase the scope of the JPI to any property
12 identified in the Divorce Decree would constitute gross error. Specifically, said JPI
13 cannot and should not encompass Wyoming Downs because: (1) this Court
14 previously found that Wyoming Downs was not community property; and (2) the
15 Nevada Supreme Court upheld the September 22, 2014 Order that disposed of said
16 asset. As this Court will certainly recall, the Divorce Decree disposed of all of the
17 assets owned by the ELN Trust and the LSN Trust, with the exception of Wyoming
18 Downs.
19
20

21 After a separate evidentiary hearing on Wyoming Downs on May 30, 2014,
22 this Court entered the following findings and orders:

23 THE COURT FURTHER FINDS that although Wyoming
24 Downs was acquired by the ELN Trust during the
25 pendency of the marriage between Eric L. Nelson and
26 Lynita S. Nelson, the Court does not find it to be
27 community property as it was clearly purchased through
28 Dynasty, an entity wholly owned by the ELN Trust and the
Court maintained the ELN Trust. The Court found no



1 facts leading it to conclude Lynita S. Nelson or the LSN
2 Trust has an interest in Wyoming Downs. The Court
3 maintained the integrity of the ELN Trust and LSN Trust
4 for the reasons set forth in the Divorce Decree.

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

12 Lynita appealed the September 22, 2014 Order. Indeed, one of the “Issues on
13 Appeal” that Lynita identified in her Docketing Statement was the following:

14 Whether the district court erred in denying Lynita a one-
15 half (1/2) interest in Wyoming Downs, which was
16 purchased during the pendency of Eric’s and Lynita’s
17 divorce proceedings. See LSN Trust’s Docketing
18 Statement at 4:10-12.³

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

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

27 Further, footnote 9 of the Opinion provides: “[w]e have considered the parties’ other
28 arguments [which would have included Lynita’s argument with respect to Wyoming
Downs] and conclude they are without merit.” In light of the foregoing, it would be

³ See also Lynita’s Answering Brief and Opening Brief on Cross-Appeal at pp. 52-53.

1 an error to enter a JPI and/or litigate any issue relating to Wyoming Downs.

2 2. THIS COURT SHOULD DENY LYNITA'S REQUEST TO
3 INCREASE THE SCOPE OF THE JPI TO ANY PROPERTY
4 PURPORTEDLY AWARDED TO HER IN THE DIVORCE
5 DECREE AND OVERTURNED BY THE NEVADA
6 SUPREME COURT.

7 Alternatively, Lynita requests that this Court increase the scope of the JPI to
8 include assets that were purportedly awarded to her in the Divorce Decree, despite
9 the fact that said award was overturned by the Nevada Supreme Court. Although she
10 does not come out and say it, upon information and belief the assets that Lynita is
11 referring to are the \$720,000 that was released to the ELN Trust and Russel Road.
12 Lynita's request to have a JPI imposed over the \$720,000 was already addressed by
13 this Court in its May 22 Order at 3:14-4:7, and as such, should be denied by this
14 Court.
15

16 Lynita's request to have a JPI imposed over Russel Road should also be denied
17 because said asset was purchased 100% by the ELN Trust. Indeed, on November 11,
18 1999, the LSN Trust purchased the Russell Road Property for \$855,945.⁴ Eric's
19 brother, Cal Nelson, made a down payment of \$20,000.00 and became a 50% owner
20 of the Russell Road Property. *See id.* Lynita and Cal later formed C J E & L, LLC,
21 which rented the Russell Road Property to Cal's Blue Water Marine. *See id.* Shortly
22 thereafter, C J E & L, LLC obtained a \$3,100,000 loan for the purpose of
23 constructing a building for Cal's Blue Water Marine. *See id.* In 2004, Lynita
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25
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28 ⁴ See Notice of Filing Asset Schedule and Notes to Asset Schedule filed on or around July 4, 2011, a copy of which is attached hereto as **Exhibit 1**.

1 executed a guarantee on the flooring contract for Cal's Blue Water Marine, and
2 shortly thereafter, the LSN Trust forfeited its interest in C J E & L, LLC and the
3 Russell Road Property to be released as a guarantor. *See id.*

4
5 The ELN Trust purchased a 66.67% interest in the Russell Road Property in
6 February 2010, over 5 years after the LSN Trust forfeited its interest. The court-
7 appointed Special Master, Larry Bertsch, found that the ELN Trust paid nearly
8 \$4,000,000.00 for its 65% interest in the Russell Road Property, which is comprised
9 of the following amounts:

- 10
11 1) In 2009, the ELN Trust purchased an FDIC note on a property in
12 Phoenix commonly known as "Sugar Daddy's" for approximately
13 \$520,000. The source of these funds came from the Line of
14 Credit. The property was sold with proceeds amounting to
15 \$1,520,597.88. Since this was designated as a 1031 exchange, the
16 proceeds were used in 2010 to purchase Eric's interest in the
17 Russell Road Property.
- 18 2) As indicated above, the ELN Trust had previously paid \$300,000
19 to pay down the Bank Loan which was secured by property in
20 Utah. In addition, the ELN Trust paid off the mortgage on Cal's
21 house amounting to \$400,000. Both amounts were paid from a
22 Line of Credit. These two amounts aggregating \$700,000 were
23 then used as a credit towards the purchase price for ELN Trust's
24 interest.
- 25 3) The ELN Trust gave a credit amounting to \$522,138.47 which
26 represented future agreements with Cal and the termination of any
27 present verbal partnership agreements. This also included money
28 on rental payments given to Cal.
- 4) The remaining amount to fulfill the obligation of the purchase
price was to borrow \$1,257,263.67 from the Line of Credit in
2010.

Therefore the purchase of ELN Trust's interest is comprised of the following:

Pay down of Bank Loan	\$300,000.00
Pay off of personal residence of Cal Nelson	400,000.00
Credit to Cal Nelson for prior payments	522,138.45
Amount to pay Bank Note from Sugar Daddy's	1,520,597.88
Amount to pay Bank Loan from Line of Credit	<u>1,257,263.67</u>
	\$4,000,000.00 ⁵

Since the ELN Trust's interest in the Russell Road Property was paid for with its own assets and proceeds, as opposed to assets belonging to Lynita or the LSN Trust, it would be inappropriate to impose a JPI over the same (especially without requiring Lynita to post a bond).

C. THIS COURT SHOULD REMOVE THE INAPPROPRIATELY FILED LIS PENDENS RECORDED BY LYNITA ON OR AROUND APRIL 11, 2018.

NRS 14.010 permits a plaintiff to file a lis pendens only "[i]n an action for the foreclosure of a mortgage upon real property, or affecting title or possession of real property." "As a general proposition, lis pendens are not appropriate instruments for use in promoting recoveries in actions for personal or money judgments; rather, their office is to prevent the transfer or loss of real property which is the subject of dispute in the action that provides the basis for the lis pendens." *Levinson v. Eighth Judicial Dist. Ct.*, 109 Nev. 747, 750 (Nev. 1993). Accordingly, NRS 14.015(1) and (2) provide that a defendant may request a hearing upon 15 days' notice, whereupon the plaintiff must:

...establish to the satisfaction of the court that:

⁵ See *id.*

- (a) The action is for the foreclosure of a mortgage upon the real property described in the notice or affects the title or possession of the real property described in the notice;
- (b) The action was not brought in bad faith or for an improper motive;
- (c) The party who recorded the notice will be able to perform any conditions precedent to the relief sought in the action insofar as it affects the title or possession of the real property; and
- (d) The party who recorded the notice would be injured by any transfer of an interest in the property before the action is concluded.

3. In addition to the matters enumerated in subsection 2, the party who recorded the notice must establish to the satisfaction of the court either:

- (a) That the party who recorded the notice is likely to prevail in the action; or
- (b) That the party who recorded the notice has a fair chance of success on the merits in the action and the injury described in paragraph (d) of subsection 2 would be sufficiently serious that the hardship on him or her in the event of a transfer would be greater than the hardship on the defendant resulting from the notice of pendency, - and that if the party who recorded the notice prevails he or she will be entitled to relief affecting the title or possession of the real property.

If plaintiff fails to meet the foregoing burden, the lis pendens must be expunged.

NRS 14.015(5).

Here, Lynita has not only recorded lis pendens on real property currently subject to the JPI (*i.e.* Banone LLC and Lindell), but also on Bella Kathryn (a property that was not awarded to her in the Divorce Decree and which has never been subject to a JPI following the entry of the Divorce Decree) and Russell Road. Said actions confirm Lynita's bad faith.

1 Lynita cannot demonstrate that she is likely to “prevail in the action” or “have
2 a fair chance of success on the merits... and [her alleged injury] would be sufficiently
3 serious that the hardship on [the LSN Trust] in the event of a transfer would be
4 greater than the hardship on [ELN Trust] resulting from the notice of pendency” for
5 the reasons set forth in the ELN Trust’s Reply to Opposition to Motion to Enforce
6 Supreme Court’s Order filed on August 4, 2017 at 5:9-7:13, the portion of which is
7 attached hereto as **Exhibit 2**. Specifically, the Nevada Supreme Court found that
8 Eric and Lynita’s community property was transmuted to separate property and
9 Lynita failed to introduce any evidence, let alone clear and convincing evidence, that
10 the Parties separate property was transmuted back to community property. In light
11 of the foregoing, the ELN Trust respectfully requests that the lis pendens be
12 expunged and that it be awarded its attorneys’ fees and costs stemming relating to the
13 same.

14 D. THE ELN TRUST’S REQUEST FOR IMPOSITION OF A BOND.

15 The ELN Trust also requests that this Court impose a reasonable bond and/or
16 other security stemming from the imposition of the JPI for the reasons set forth in
17 Section III(A) *supra*.

18 E. THE ELN TRUST RESPECTFULLY REQUESTS THAT THE ELN
19 TRUST BE ALLOWED TO MANAGE THE LINDELL PROPERTY.

20 Although Lynita provided the Quitclaim Deed for the Lindell Property to the
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ELN Trust on May 22, 2018,⁶ she continues to manage said property despite the fact that she possesses a 50% interest in said property. As evidenced by the Accountings provided by Lynita and/or the LSN Trust, Lynita has mismanaged the Lindell Property, and in so doing, has charged an unreasonable management fee. The ELN Trust is willing to manage the Lindell Property for free pending resolution of the Divorce Proceeding, which will include the preparation of a monthly accounting and payment to the LSN Trust for 50% of rents collected. Alternatively, the ELN Trust respectfully requests that this Court appoint a disinterested management company to manage the same as it would be inequitable to allow Lynita to continue to manage the same.

F. THE ELN TRUST IS ENTITLED TO ITS ATTORNEYS' FEES AND COSTS.

NRS 18.010 explains:

“... the court may make an allowance of attorney's fees to a prevailing party: (b) Without regard to the recovery sought, when the court finds that the claim... of the opposing party was brought or maintained **without reasonable ground** or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden

⁶ Lynita violated this Court's April 19 Order because she failed to transfer the Banone LLC and Lindell Property to the ELN Trust within “thirty days of the date of this Order.” Indeed, although Lynita executed the quitclaim deeds on May 10, 2018, she tactically withheld turning over the same until May 22, 2018, in violation of said order.

1 limited judicial resources, hinder the timely resolution of
2 meritorious claims and increase the costs of engaging in
3 business and providing professional services to the public.

4 EDCR 7.60 allows the Court to award attorneys' fees and costs when "a party
5 without just cause...(1) Presents to the court a motion or an opposition to a motion
6 which is obviously frivolous, unnecessary or unwarranted... (3) So multiplies the
7 proceedings in a case as to increase costs unreasonable and vexatiously."

8 Here, the Motion was brought without reasonable grounds for the reasons set
9 forth above. Consequently, Eric request that he be awarded his attorney's fees and
10 costs for having to oppose the frivolous Motion and seeking to have the improperly
11 recorded lis pendens expunged.
12

13
14 **IV. CONCLUSION**

15 As indicated *supra*, this is not one of the "rare circumstances" where a
16 rehearing and/or reconsideration should be granted. To the contrary, the majority (if
17 not all) of the arguments made in Lynita's Motion for Reconsideration were
18 identical to the arguments that she made at the prior hearings and considered by this
19 Court when it entered its Orders on April 19 and May 15. Consequently, Lynita's
20 Motion should be denied in its entirety.
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1 The ELN Trust also moves this Court for an order: (1) terminating the JPI; (2)
2 imposing a bond on any property subject to the JPI; (3) expunging the lis pendens;
3 (4) allowing the ELN Trust to manage Lindell; and (5) for Attorneys' Fees and
4 Costs.
5

6 DATED this 22nd day of June, 2018.

7 SOLOMON DWIGGINS & FREER, LTD.
8

9
10 By: 

11 MARK A. SOLOMON, ESQ.

12 Nevada State Bar No. 0418

13 JEFFREY P. LUSZECK, ESQ.

14 Nevada State Bar No. 9619

15 9060 West Cheyenne Avenue

16 Las Vegas, Nevada 89129

17 *Attorneys for Matt Klabacka, Distribution*
18 *Trustee of the ERIC L. NELSON NEVADA*
19 *TRUST dated May 30, 2001*
20
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, pursuant to NRCP 5(b), that on June 22, 2018, I served a true and correct copy of the foregoing **OPPOSITION TO LYNITA NELSON'S MOTION FOR RECONSIDERATION AND CLARIFICATION OF THE COURT'S DECISION ENTERED MAY 22, 2018; AND COUNTERMOTION TO: (1) TERMINATE THE JPI; (2) IMPOSE A BOND ON ANY PROPERTY SUBJECT TO THE JPI; (3) EXPUNGE THE INAPPROPRIATELY RECORDED LIS PENDENS; (4) ALLOW THE ELN TRUST TO MANAGE LINDELL; AND (5) ATTORNEYS' FEES AND COSTS**, to the following in the manner set forth below:

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

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

Attorneys for Defendant

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

Attorneys for Plaintiff


An Employee of SOLOMON DWIGGINS & FREER, LTD.

EXHIBIT “1”

EXHIBIT “1”

1 **NOTC**

2 Larry L. Bertsch, CPA, CFF
3 Nicholas S. Miller, CFE
4 LARRY L. BERTSCH, CPA & ASSOCIATES
5 265 East Warm Springs Rd., Suite 104
6 Las Vegas, Nevada 89119
7 Telephone: (702) 471-7223
8 Facsimile: (702) 471-7225

9 *Forensic Accountants*

10 **DISTRICT COURT**
11 **FAMILY DIVISION**
12 **CLARK COUNTY, NEVADA**

13 **ERIC L. NELSON,**

14 **Plaintiff,**

15 **v.**

16 **LYNITA SUE NELSON,**

17 **Defendant.**

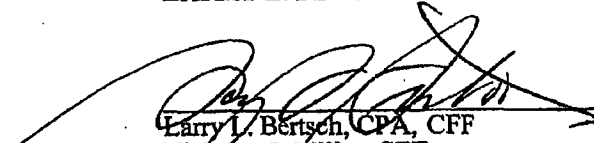
Case No. D-09-411637-D
Dept. O

**NOTICE OF FILING ASSET SCHEDULE
AND NOTES TO ASSET SCHEDULE**

18 Larry L. Bertsch, CPA, CFF, and Nicholas S. Miller, CFE, of the accounting firm of LARRY
19 L. BERTSCH, CPA & ASSOCIATES, hereby file as Exhibit "A" their Asset Schedule and Notes to
20 Asset Schedule pursuant to Judge Sullivan's Order in this matter.

21 DATED this 5th day of July, 2011.

22 **LARRY L. BERTSCH CPA & ASSOCIATES**

23 
24 Larry L. Bertsch, CPA, CFF
25 Nicholas S. Miller, CFE
26 265 East Warm Springs Rd., Suite 104
27 Las Vegas, Nevada 89119
28 (702) 471-7223 Telephone
(702) 471-7225 Facsimile
Forensic Accountants

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of July, 2011, I mailed a copy of the Notice of Filing Asset Schedule and Notes to Asset Schedule to the following at the last known address, by depositing the same in the United States mail in Las Vegas, Nevada, first class postage prepaid and addressed as follows:

David A. Stephens, Esq.
STEPHENS, GOURLEY & BYWATER
3636 N. Rancho Drive
Las Vegas, NV 89130
Attorneys for Plaintiff Eric L. Nelson

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


An employee of Larry L. Bertsch, CPA & Associates

Exhibit “A”

Exhibit “A”

Nelson v. Nelson
Asset Schedule

July 5, 2011

Larry L. Bertsch, CPA & Associates

Larry L. Bertsch, CPA, CFF

Nicholas S. Miller, CFE, CSAR, MBA

Nelson v. Nelson Asset Schedule					
	NOTE	Lynita Value	Eric Value	Asset Titled	Income Producing
Real Estate					
7065 Palmyra - Las Vegas, Nevada	1	650,000	910,000	Lynita - Trust	NO
2911 Bella Kathryn Circle - Las Vegas	2	TBD	900,000	Eric Trust - Banone	NO
2911 Bella Kathryn Circle - Las Vegas	2	TBD	175,000	Eric Trust - Banone	NO
AZ-31 Gateway Lots	24	139,500	139,500	Lynita Trust	NO
AZ-29 Gateway Lots	17	139,500	139,500	Eric - Trust	NO
Russell Road Property (65%)					
Owned by Eric Nelson Auctioneering (50%)	3a	TBD	2,000,000	Eric - Trust	YES
Owned by Eric Nelson Trust (15%)	3b	TBD	2,000,000	Eric - Trust	YES
Receivable from CJE & L, LLC	3c	742,368	TBD	Eric - Trust	Unknown
Brianhead, Utah	4	2,000,000	2,000,000	Each Trust - 50%	NO
3611 Lindell - Las Vegas	5	TBD	1,400,000	Each Trust - 50%	YES
5913 Pebble Beach	6	75,000	75,000	Lynita - Trust	NO
Wyoming - 200 acres (40%)	7	TBD	800,000	Lynita - Trust	NO
Mississippi Properties					
830 Arnold Ave. (Clay House) - Greenville, Miss.	8	40,000	40,000	Lynita - Trust	YES
MS Bay 200 Acres - allocated					
Emerald Bay, LLC (Holding Company)					
Bal Harbour, LLC	9a	45,500	None	Each Trust - 50%	NO
Bay Beach Resorts, LLC	9b	TBD		Each Trust - 50%	NO
Bay Resorts, LLC	9c	TBD		Each Trust - 50%	NO
	9d	TBD		Each Trust - 50%	NO
MS Bay allocated acreage- Lynita Trust					
Lynita Trust - not used	9e	TBD		Lynita - Trust	NO
RV Park	9f	TBD		Lynita - Trust	YES
Dynasty					
Silver Slipper	10a	TBD		Eric Trust - Dynasty	YES
MS Bay allocated acreage Titled to Dynasty	10b	TBD	937,500	Eric Trust - Dynasty	NO
MS Bay allocated acreage Titled Frank Soris Trust	10c	TBD	312,500	Eric Trust - Dynasty	NO
Grotta, LLC -- 16.67% interest					
Dynasty profit sharing agreement	11a	TBD		Lynita - Trust	NO
MS Bay allocated interest - titled to Grotta, LLC	11b	TBD	16,667	Lynita - Trust	NO
Grotta Financial Partnership					
	11c				NO
Riverwalk Ent. (Holding Company for Hiaway Casino)	12	Unknown	None	Eric - Trust	NO

TBD = To Be Determined

Notes to Asset Schedule are an integral part of this schedule

SRAPP000479

<u>Other Investments</u>						
<u>Banone, LLC</u>						
4412 Baxter - Las Vegas	13,13a	62,522	82,522	Eric Trust - Banone	YES	
5314 Clover Blossom Court - North Las Vegas, Nevada	13	108,705	108,750	Eric Trust - Banone	YES	
1301 Heather Ridge - North Las Vegas	13	118,459	118,459	Eric Trust - Banone	YES	
6213 Anaconda - Las Vegas	13	81,411	81,411	Eric Trust - Banone	YES	
1608 Rusty Ridge Lane - Henderson (Daughters House)	13	77,526	77,526	Eric Trust - Banone	NO	
Mesa Vista (5 acres)	13	100,000	100,000	Eric Trust - Banone	NO	
Mesa Vista - Lot 68	13	21,229	21,229	Eric Trust - Banone	NO	
2209 Farnmouth Circle - Nevada	13	88,166	88,166	Eric Trust - Banone	YES	
3301 Terra Bella Drive - Nevada	13	65,013	65,013	Eric Trust - Banone	YES	
4133 Compass Rose Way - Nevada	13	67,820	67,820	Eric Trust - Banone	YES	
4601 Concord Village Drive - Nevada	13	61,070	61,070	Eric Trust - Banone	YES	
4612 Sawyer Ave - Nevada	13	49,304	49,304	Eric Trust - Banone	YES	
4820 Marnell Drive - Nevada	13	23,643	23,643	Eric Trust - Banone	YES	
5113 Churchill Ave. - Nevada	13	58,070	58,070	Eric Trust - Banone	YES	
5704 Roseridge Ave. - Nevada	13	61,510	61,510	Eric Trust - Banone	YES	
6301 Cambria Ave. - Nevada	13	68,244	68,244	Eric Trust - Banone	YES	
6304 Guadalupe Ave. - Nevada	13	41,599	51,499	Eric Trust - Banone	YES	
Mesa Vista - Lot 67 - Arizona (Deeded Back)	14	21,263	21,263	Eric Trust - Banone	NO	
1628 W. Darrel Road - Arizona	14	37,882	37,882	Eric Trust - Banone	YES	
1830 N. 66th Drive - Arizona	14	24,791	24,791	Eric Trust - Banone	YES	
1837 N. 59th Street - Arizona	14	29,050	29,050	Eric Trust - Banone	YES	
2220 W. Tonto Street - Arizona	14	30,906	30,906	Eric Trust - Banone	YES	
3225 W. Roma Ave. - Arizona	14	31,299	31,299	Eric Trust - Banone	YES	
3307 W. Thomas Road - Arizona	14	35,383	35,383	Eric Trust - Banone	YES	
3332 N. 80th Lane - Arizona	14	29,924	29,924	Eric Trust - Banone	YES	
3415 N. 84th Lane - Arizona	14	35,368	35,368	Eric Trust - Banone	YES	
3424 W. Bloomfield Road - Arizona	14	43,084	43,084	Eric Trust - Banone	YES	
3631 N. 81st Ave. - Arizona	14	30,063	30,063	Eric Trust - Banone	YES	
4141 N. 34th Ave. - Arizona	14	21,804	21,804	Eric Trust - Banone	YES	
4541 N 76th Ave. - Arizona	14	32,540	32,540	Eric Trust - Banone	YES	
4816 S. 17th Street - Arizona	14	19,633	19,633	Eric Trust - Banone	YES	
5014 W. Cypress Street - Arizona	14	30,324	30,324	Eric Trust - Banone	YES	
5518 N. 34th Drive - Arizona	14	27,641	27,641	Eric Trust - Banone	YES	
6172 W. Fillmore Street - Arizona	14	39,871	39,871	Eric Trust - Banone	YES	
6202 S. 43rd Street - Arizona	14	27,772	27,772	Eric Trust - Banone	YES	
6720 W. Cambridge Ave. - Arizona	14	32,563	32,563	Eric Trust - Banone	YES	
6822 W. Wilshire Drive - Arizona	14	40,477	40,477	Eric Trust - Banone	YES	
6901 W. Coolidge Street - Arizona	14	32,583	32,583	Eric Trust - Banone	YES	
<u>Banone, LLC - AZ</u>						
4838 W Berkeley Rd. - Arizona	15	TBD	32,622	Eric Trust - Banone	YES	
8 Homes - Arizona	15	TBD	251,000	Eric Trust - Banone	NO	
<u>Banone Nevada Notes Receivable</u>						
R & D Custom Builders - DMV Lot 16-17 (secured)	16			Eric Trust - Banone		
Advantage Construction - MV Lot 37 (secured)	16a	46,463		Eric Trust - Banone	YES	
Gerald & Linda Fixsen - MV Lot 52 (secured)		20,081		Eric Trust - Banone	YES	
Gerald & Linda Fixsen - MV Lot 53 (secured)		22,838		Eric Trust - Banone	YES	
Gerald & Linda Fixsen - MV Lot 53 (secured)		22,838		Eric Trust - Banone	YES	
Joe Williams & Sherry Fixsen - MV Lot 54 (secured)		22,838		Eric Trust - Banone	YES	
Bidco, Inc. - MV Lot 61 (secured)		21,263		Eric Trust - Banone	YES	
Cary & Troy Fixsen - MV Lot 98 (secured)		22,838		Eric Trust - Banone	YES	
Amada & Chris Stromberg (secured by Condo in PA)	16b	133,357		Eric Trust - Banone	YES	
JB Ramos Trust (secured by 436 Europa Way)	16c	78,000		Eric Trust - Banone	YES	
Katherine Stephens (secured by 1601 Knoll Heights)	16d	83,000	63,000	Eric Trust - Banone	YES	
Chad Ramos (secured 7933 Dover Shores)	16e	60,000		Eric Trust - Banone	YES	
Alicia Harrison (secured by 1025 Academy)		68,620		Eric Trust - Banone	YES	
Eric T. Nelson (secured by 8619 W. Mohave - AZ)	16f	95,000		Eric Trust - Banone	YES	
Michael & Lyndia Asquith - MV Lot 50 (secured)	16g	23,625		Eric Trust - Banone	NO	

TBD = To Be Determined

Notes to Asset Schedule are an integral part of this schedule

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Other Receivables						
Frank Soris (Contingent)	17	TBD	1,000,000	Eric - Trust	YES	
Nikki Cvintavich	18	200,000	200,000	Eric Nelson	YES	
Family Loans						
Chad Ramos	19	261,675	-	Eric - Trust	Unknown	
Jesse Harber	20	47,000	25,000	Eric - Trust	Unknown	
Brock Nelson		10,000	10,000	Eric - Trust	Unknown	
Autos/Vehicles						
2008 Escalade EXT SUV (Owned) (Eric's)	21	40,475	38,840	Eric - Trust	NO	
2007 Mercedes SL 550 (Owned) (Eric's)	21	50,115	42,845	Eric - Trust	NO	
2011 Audi (Leased) (Lynita's)		Lease	Lease	Lynita	NO	
ATV's and Snowmobiles	21a	TBD	TBD	Unknown	NO	
Tax Situation						
2006 Tax Refund (Held by Dave Stephens, Esq.)	22	110,125	110,128	Eric Nelson	NO	
Cash & Investment Accounts						
Lynita's Accounts						
Schwab Capstone Capital- 2834 (3/31/2011)	23	1,016,969		Lynita - Trust		
Credit Union 1 37214-01 (3/31/2011)	23	5		Lynita - Trust		
Credit Union 1 37214-22 (3/31/2011)	23	48,274		Lynita - Trust		
Silver State 3736-01 (3/31/2011)	23	2,020		Lynita Nelson		
Silver State 3736-80 (3/31/2011)	23	3,767		Lynita Nelson		
Eric Accounts						
Bank of America 5010-0976-5829 (3/31/2011)	23		82,781	Eric - Trust		
Bank of America 5010-0716-2754 (3/31/2011)	23		13,685	Eric Trust - Banone		
Bank of America 0050-1157-7064 (3/31/2011)	23		3,533	Eric Trust - Banone		
Bank of America 5010-1100-6958 (3/31/2011)	23		7,439	Eric Trust - EN Auct		
Citi National Bank 363201539 (3/31/2011)	23		84,919	Eric Trust - Banone		
Citi National Bank 363005152 (3/31/2011)	23		4,304	Eric Trust - Dynasty		
Citi National Bank 363250807 (3/31/2011)	23		13,316	Eric Trust - Banone		
Mellon - 10594001700 (3/31/2011)	23		2,757,160	Eric - Trust		
Liabilities						
Frank Soris Contingent Liability	17		(562,981)	Eric - Trust		
Due on Line of Credit (3/31/2011)	23		(1,807,369)	Eric - Trust		

TBD = To Be Determined

Notes to Asset Schedule are an integral part of this schedule

SRAPP000481

Nelson v. Nelson
Notes to Asset Schedule

July 5, 2011

Larry L. Bertsch, CPA & Associates

Larry L. Bertsch, CPA, CFF

Nicholas S. Miller, CFE, CSAR, MBA

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Larry L. Bertsch, CPA & Associates reserves the right to update this report upon the production of additional documents. The information contained within this report is for use only in the conjunction with the surrounding Clark County District Court case Nelson v Nelson.

Note 1 - 7065 Palmyra

This is the current residence of Lynita Nelson. It has been alleged that improvements have been made to the property in the last two years. The parties do not agree on the value of the Property.

Since there is no agreement on the value of the property, it is recommended an appraisal be made on the property directed by an independent third party.

Note 2 - 2911 Bella Kathryn

This is the current residence of Eric Nelson which includes an adjacent vacant lot for which Eric is conducting improvements. Eric has valued the property as \$900,000 for the residence and \$175,000 for the adjoining lot. Lynita does not agree and her issue is stated below.

According to the detailed records of Eric Nelson, a total amount of \$1,362,612.57 has been spent towards the property which contains the house. The house was initially purchased for \$381,984.00 on 12/28/2009 and improvements have been made to the property as of 06/11/2011 amounting to \$980,628.57.

In reviewing the details of the house improvements on the general ledger kept by Eric Nelson, there was only one payment recorded to a relative, Paul Nelson, in the amount of \$25,000 and designated as contract labor in building the Residence. There were other payments recorded to relatives for reimbursement of materials and supplies used on the building of the residence. None of the reimbursed amount appeared material or not related to the residence. Those reimbursed payments were made to Paul Nelson, Cal Nelson, and to Big Fish, LLC, a company owned by Cal Nelson.

The adjoining lot was purchased on 08/11/2010 for a cost of \$175,000. As of 06/11/2011, improvements have been made towards the lot in the amount of \$64,558.68. In total, the purchase price and additional improvements towards this property amount to \$239,558.68.

Therefore the aggregate costs of the residence and adjoining lot at 06/11/2011 amounts to \$1,602,171.25.

Since there is no agreement on the value it is recommended an appraisal be made of the property directed by an independent third party or a decision that funds expended for the property be the criteria of value.

At issue - Lynita claims Eric has used community funds to build this residence and feels regardless of an appraisal, she should receive 50% on the costs to buy and build the property.

Note 3 - Russell Road Property

History

Property consisting of 3.3 acres at 5220 E. Russell Road was purchased on November 11, 1999 for \$855,945 by the Lynita Nelson Trust and the down payment from Cal Nelson amounting to \$20,000. Lynita then became a 50% partner with Cal Nelson in a partnership named CJE&L, LLC which was formed for the purpose of renting the property to Cal's Blue Water Marine.

Shortly thereafter, CJE&L, LLC obtained a loan from Business Bank of Nevada in the amount of \$3,100,000. The purpose of this loan was to build a building for the operations of Cal's Blue Water Marine, Inc. The loan was to be guaranteed by Clarence and Jeanette, individually as well as their Trust dated May 31, 2001 and also Cal's Blue Water Marine, Inc.

Sometime in 2004, Lynita signed a guarantee on the flooring contract for the inventory of Cal's Blue Water Marine, Inc. On 01/01/2005, Lynita withdrew her guarantee of the flooring contract and in return, Lynita signed an assignment or forfeit of her interest in the partnership to remove her from the property records. (The Examiner has not seen the flooring agreement that was signed by Lynita, although requested - Each of the parties claims the other has the contract). According to the records, the forfeiture of partnership interest was transferred to the capital account of Cal Nelson there being no cash attached to the transaction.

The boat business failed in 2008. At that time, the Bank demanded a \$300,000 pay down to keep the loan in performing status. Eric paid the \$300,000 which was secured by property owned by Cal Nelson and located in Utah.

Eric's purchase of the interest in property

On or about 02/10/2010, Eric Nelson decided to purchase a 65% interest in the property. Eric's 65% interest is said to have cost \$4,000,000; which is comprised of the following amounts:

- 1) In 2009, Eric purchased an FDIC note on a property in Phoenix commonly known as "Sugar Daddy's" for approximately \$520,000. The source of these funds came from the Line of Credit. The property was sold with proceeds amounting to \$1,520,597.88. Since this was designed as a 1031 exchange, the proceeds were used in 2010 to purchase Eric's interest in the Russell Road Property.
- 2) As indicated above, Eric had previously paid \$300,000 to pay down the Bank Loan which was secured by property in Utah. In addition, Eric paid off the mortgage on Cal's house amounting to \$400,000. Both amounts were paid from Eric's Line of Credit. These two amounts aggregating \$700,000 were then used as a credit towards the purchase price for Eric's interest.

3) Eric gave a credit amounting to \$522,138.47 which represented future agreements with Cal and the termination of any present verbal partnership agreements. This also included money on rental payments given to Cal.

4) The remaining amount to fulfill the obligation of the purchase price was to borrow \$1,257,263.67 from the Line of Credit in 2010.

Therefore the purchase of Eric's interest is comprised of the following:

Pay down of Bank Loan	\$ 300,000.00
Pay off of personal residence of Cal Nelson	400,000.00
Credit to Cal Nelson for prior payments	522,138.45
Amount to pay Bank Note from Sugar Daddy's	1,520,597.88
Amount to pay Bank Loan from Line of Credit	1,257,263.67
	<u>\$ 4,000,000.00</u>

Therefore the amount of cash contributed directly to the interest in the property by Eric in 2010, amounts to \$2,777,861.55 (1,520,597.88 + 1,257,263.67). The cash reportedly paid off the original loan held by Business Bank of Nevada.

According to CJE&L's tax returns and representations made by Cal Nelson, Cal Nelson's capital account includes \$855,000; which represents the purchase price of the land originally purchased on November 11, 1999 by the Lynita Nelson Trust as well as \$501,529 in leasehold improvements made by Cal's Blue Water Marine. The summary document supporting the leasehold improvements contribution was believed to be at cost and not the net depreciated value. As prior indicated Cal's Blue Water Marine eventually failed in 2008. Since the Business failure in 2008, Cal Nelson has taken distributions from CJE&L of \$11,096 in 2009 and \$73,978 in 2010, aggregating to \$85,074.

The current ownership of the 5220 E. Russell Road property is 50% by Eric Nelson Auctioneering (an asset of the Eric Nelson Trust), 15% by the Eric Nelson Trust and 35% by CJE&L, LLC. (See below).

Note 3a - 50% in Russell Road owned by Eric Nelson Auctioneering

In the purchase of the Russell Road Property, the ownership of 65% of the property purchase from CJE & L, LLC was described above to be \$4,000,000. Eric Nelson says that 50% of the interest was designated to be owned by Eric Nelson Auctioneering and the other 15% by the Eric Nelson Trust.

Note 3b - 15% sale back to Cal Nelson for 15% interest by Eric Trust

The 15% interest is evidenced by a note in the amount of \$2,000,000 the principal amount is due in seven years from 2/3/2010 from Cal Nelson to Eric Nelson Trust. The note is secured by 15% of the real property owned by CJE & L, LLC and 15% of all rents collected from the property will be recognized as interest on the note.

Note 3c - Receivable from CJE & L, LLC amounting to \$742,368.

According to the 2010 tax return of CJE&L, LLC (owned 99% by Nelson Nevada Trust (Cal's Trust) and 1% by Cal Nelson), the company reports a liability in the amount of \$742,368 is due to Eric Nelson Auctioneering (Reported under Eric Trust - Eric Nelson Auctioneering). We have not received information as to the nature of this note.

Because of the controversy on this property, it is recommended that an appraisal of the property be made directed by an independent third party.

At issue, Lynita believes that Cal Nelson has not put any capital into the investment and therefore the amount of this asset is 100% owned solely by Lynita and Eric Nelson.

Also at issue is that Lynita bought the land for \$855,000 and was forced to forfeit her interest through an assignment to Cal Nelson. This issue is over a guarantee made by Lynita on a flooring arrangement on boats for a company owned by Cal Nelson, named Cal's Blue Water Marine.

Subsequent Transaction

The property was sold to the Oasis Baptist Church on 05/27/2011, prior to this transaction, the church held an option to purchase for \$6,500,000. The payments on the note were to begin on 09/01/2011. Until this date, the Oasis Baptist Church was to pay \$17,500 each month for the months of June, July, and August. Then starting on 09/01/2011 the Oasis Baptist Church will pay interest only at 6% on \$6,000,000 for 5 years and then will have a balloon payment due of \$6,500,000.

This contract was amended on 06/15/2011 because the Church could not get an exemption from property taxes unless they own the property. Therefore the original financial arrangement has been amended.

The Oasis Baptist Church needs additional improvements in order to bring their school over to the Russell Road property. In order to do this, they need an additional \$300,000 in funds for improvements to the property. Currently, they are paying \$20,000 per month space rental for them to conduct their school.

As of 06/15/2011, Julie Brown loaned \$300,000 to the Oasis Baptist Church and has a 1st Note/Deed on the property.

A 2nd Note/Deed is placed on the property to recapture all back rents and taxes in the amount of \$295,000. The 2nd Note/Deed is shared 1/3rd to Eric Nelson Auctioneering, 1/3rd to the Eric Nelson Trust and 1/3rd to CJE&L, LLC.

Therefore the remaining amount of \$6,500,000 through subordination has become a 3rd Note/Deed in the favor of shared 1/3rd to Eric Nelson Auctioneering, 1/3rd to the Eric Nelson Trust and 1/3rd to CJE&L, LLC.

The current terms are to pay \$17,500 per month until 09/01/2011 and \$30,000 thereafter. However they may ask that the payments be extended to 12/01/2011 before they begin to pay \$30,000 per month for their purchase of the property.

We understand there is a servicing agreement to collect the mortgage payments. We do not know the entity that the servicing arrangement is contracted.

The servicing agency is an issue with Lynita.

Note 4 - Brianhead, Utah

The property located in Brianhead, Utah includes a cabin on 150 acres. In addition to the property and building, the ownership includes water rights.

Eric originally valued the asset at \$3,000,000 but now believes the property has a value of approximately \$2,000,000. Lynita states the property should bring \$2,000,000 at sale, which is her preference.

It appears there is an agreement on the value of this property. However, there is no agreement on the disposition of the asset. As a result, a third-party appraisal may be required to determine the value either party should pay to buy the other one out.

Note 5 - 3611 Lindell

This property is an office complex. The complex has 13,040 square feet and is the location of Eric Nelson offices. Eric collects the monthly rents as well as pays for the monthly maintenance.

Both income and expenses will be listed in the Sources of Income and Expenses report.

Since there is a disagreement about the value of the office building, it is recommended an appraisal by made of the property by an independent third party.

Note 6 - 5913 Pebble Beach

This property is owned by the LSN Nevada Trust and is occupied by Lynita's sister, Thelma. The mortgage of \$69,000 has been paid off and the property is currently unencumbered. It appears that neither party is interested in the property and may become a non-issue.

Note 7 - Wyoming (200 acres)

This property consists of 200 acres located in Evanston, Wyoming and owned 40% by Lynita's Trust, 50% by Paul Nelson (relative) and 10% by Aleda Nelson (relative). This property could be developed into 84 Lots and are in the name of Equestrian Estates, LLC.

Eric has given a value for Lynita's 40% interest in the property of \$800,000. Lynita has not determined a value,

It is recommended an appraisal be made by an independent third party to obtain a value of the 40% interest.

Note 8 - 830 Arnold Ave.

This is a 1,300 sq. ft. house located in Greenville Mississippi. The house is being rented at \$500 per month and the rent is being collected and deposited into Banone's Bank Account. Eric has valued the property at \$40,000, which is believed to be the initial purchase price of the property.

Because there are so many other issues, it is recommended the purchase price be considered the value based upon the current economic conditions.

Note 9 - MS Bay (200 acres)

This is 200 acres located in Mississippi. The ownership and titles to the property are not clear and need to be addressed. Currently the property is titled as follows:

	<u>Acres</u>
Bal Harbour, LLC (Note 9b)	4.7790560
Bay Harbour Beach Resort, LLC (Note 9c)	2.7996560
Emerald Bay, LLC (note 9a)	0.2217080
Grotta (Note 11)	25.3773880
Lynita Trust - RV Park (Note 9e)	20.6856080
Lynita Trust (Note 9f)	41.0152290
	<u>94.8786450</u>
Dynasty (Note 10b)	91.0927580
Frank Soris Family Trust (Note 10c)	30.1382120
	<u>121.2309700</u>
Total Acres	<u>216.1096150</u>

Note 9a - Emerald Bay, LLC has .221708 acres titled in its name, which was purchased for \$55,000. Emerald Bay, LLC (formally Paradise Bay Mississippi, LLC was formed in 2005 and changed name in 2007) is a holding Company whose purpose was to assemble property of 120

acres about 2 miles from the current Silver Slipper Casino to develop a resort type project. The subsidiaries of the Company were Bal Harbour, LLC, Bay Harbour Beach Resort, Montgage Resort, LLC, Bay Resorts, LLC, and Paradise landing, LLC. This project is not currently operating and is at a standstill.

In 2008 the ownership in this property went from 100% ownership by Eric Trust to an ownership of 50% to Lynita Trust and 50% to Eric Trust.

At issue, Emerald Bay owes Nelson & Associates \$45,500.

The amount due from Emerald Bay, LLC were funds advanced to pay for expenses in the assembling process. Emerald Bay does not have funds and therefore doubtful to repay Nelson & Associates back.

Note 9b - Bal Harbour, LLC has 4.779056 acres titled in its name.

Note 9c - Bay Harbour Beach Resort, LLC has 2.799656 acres titled in its name.

Note 9d - Bay Resorts, LLC currently does not have any ownership in land. This entity operated the RV Resort, had its own Bank Account until the law suit was filed. The Bank Account was closed and the rental income from Silver Slipper was the deposited into Banone.

Note 9e - Lynita Trust has 41.0152290 titled in its name. This property is not being used.

Note 9f - RV Park is owned by Lynita's Trust. The property designated for its use is 20.6856080 acres. The Silver Slipper is leasing this property and pays an amount of approximately \$4,000.00 per month.

Since there are different owners and the property is being used differently, it is recommended either an appraisal for the separate parcels be made or that the entire 200+ acres be appraised altogether, then the value could be allocated to the individual owners. In either case, the appraisal should be directed by an independent party.

Note 10 - Dynasty

Dynasty is an entity that is included in the Eric Nelson Trust consisting of various types of investments as described below.

Note 10a - Silver Slipper (Owned by Dynasty)

Dynasty has a 34% interest in the Silver Slipper Casino. If options were to be exercised, then the interest could increase to 43%.

There is currently a dispute between Eric Nelson and the other partners of the Silver Slipper Casino. In the operating agreement of Silver Slipper is a buyout provision. The other partners are attempting to exercise that provision and have offered \$1,586,000 and are pushing Eric Nelson to accept.

The other partners have filed a law suit in Los Angeles to force Eric Nelson to accept their offer. Eric Nelson is unwilling to accept the current position of the other partners. In order to oppose the other partners, Eric Nelson did put Dynasty into Bankruptcy, filing in Mississippi.

The other partners filed a motion to have the Bankruptcy dismissed as a bad faith filing. It is understood that hearing has taken place and the Bankruptcy has been dismissed. Therefore it is back to defending the law suit filed in Los Angeles.

There are other issues affecting the ownership interest in the Silver Slipper, one of which being that Lynita is not currently licensed by the Mississippi Gaming Authorities and therefore not qualified to own an interest in a gaming property.

It is recommended that a Business Valuation be directed by an independent third party to determine the value of the Silver Slipper and also to determine the value of the percent interest owned by Dynasty.

Note 10b - Dynasty owns 91.092758 acres. There has been a lien of \$1,000,000 placed against the property by BBJ, a lender to Silver Slipper.

Note 10c - This land consisting of 30.1382120 acres was deeded to Frank Soris Family to collateralize the \$1,300,000 owed from the 2002 transaction between Soris and Lynita Trust. (See Note 17 for the Soris transactions). It has been stated that this acreage has been quitclaimed back to Dynasty when the property in Banone was substituted as collateral for the \$1,300,000 note to Soris. The quitclaim has not been recorded.

Eric Nelson stated the value of the property, both what Dynasty owns and the Frank Soris property totaling 121.230970 acres is valued at \$1,250,000.

It is recommended that an appraisal be made of the property owned by Dynasty and the property currently owned by Frank Soris. Such an appraisal should be conducted as recommended in Note 9.

Note 11 - Grotta, LLC

Lynita's Trust owns a 1/6th interest or 16.67% with Eric Nelson's relatives owning the remaining 5/6th interest. Grotta, LLC controls various investments as described below:

Note 11a - Dynasty Profit Sharing Agreement

Eric Nelson states that this Company has an interest in a Profit Sharing agreement whereby Grotta, LLC is to receive 10% of Dynasty's Profits. (No determination has been made to ascertain if that is an investment and/or operating profits). There have been no profits to-date; therefore no payments from Dynasty have ever been made to Grotta, LLC.

Note 11b - Mississippi Land

The Grotta, LLC owns 25.377388 acres of the 200 acres described in Note 9 as MS Bay 200 acres. Eric states the value of that land is approximately \$100,000.

Eric values Lynita's trust ownership in this land at \$16,667. Lynita does not have a separate value for the property owned by Grotta, LLC.

Note 11c - Grotta Financial Partnership

The Grotta Financial Partnership owned land on Flamingo Road in Las Vegas, Nevada, which was condemned for the purpose of using the land to construct the "Beltway". The condemnation was used as an IRS Section 1033 exchange. Cash amounting to \$3,025,000 which was in the Grotta Financial Partnership, was transferred to the Eric Nelson Trust for future investing purposes in order to comply with the IRS Section 1033 exchange provisions. Therefore, the cash on the books of Grotta Financial Partnership was replaced with a Note Receivable to the Eric Nelson Trust. The investments made by Eric Nelson through the Eric Nelson Trust would at this time be included in the current asset schedule.

If the Eric Nelson Trust were to pay Grotta Financial Partnership the amount of \$3,025,000 or any part thereof, it would then create the situation that the amount would become taxable because the transaction would be treated as a loan which does not qualify under the IRS Section 1033 exchange rules.

At issue, there is a Note Receivable in the amount of \$3,025,000 booked on Grotta Financial Partnership financial statements from the Eric Nelson Trust. The transaction contains various issues relating to taxable consequences if paid back.

Note 12 - Hideaway Casino

This was an Investment between Eric Nelson and Steve Bieri. Eric Nelson has not spent community funds in his effort to develop a casino. The investment was not viable and thus failed. Eric states that there may be a law suit against Eric Nelson to the extent of the loss suffered by Mr. Bieri amounting to approximately \$3,000,000.

Note 13 - Banone, LLC (Nevada)

These properties are located in Nevada and titled in the name of Banone, LLC, which is in Eric Nelson Trust. The value indicated on the schedule is the purchase price of the property including repairs thereto. In discussion with Lynita, she appeared to have a willingness to accept those values, with the exception of 4412 Baxter as described below:

Note 13a - 4412 Baxter - According to Lynita, the amount booked for 4412 Baxter is \$20,000 greater than it should be. Lynita claims the proper amount should be \$62,522; instead of \$82,522.

Note 14 - Banone, LLC (Arizona)

These properties are located in Arizona and titled in the name of Banone, LLC which is in Eric Nelson Trust. The value indicated on the schedule is the purchase price of the property including repairs thereto. In discussion with Lynita, she appeared to have a willingness to accept those values.

Note 15 - Banone AZ, LLC

There is one property in Banone AZ, LLC that is income producing. During 2010, 8 additional homes were purchased at a cost of \$251,000; at which time we have not received indication that they are income producing.

Note 16 - Notes Receivable

To date, we have not received copies of the documents relating to the various notes receivable. Eric represented that the notes were secured by property but we have not examined appropriate evidence to determine the validity of the collateral.

a. This note is in default. Roger Nelson is owner of RD Builders. Roger Nelson is not a relative.

b. Amada & Chris Stromberg are the daughter and son-in-law of Eric and Lynita Nelson.

c. JB Ramos Trust is related to an employee of Eric Nelson

d. Niece - At issue by Lynita, Purchased by Banone on 03/02/2010 and questions the down payment of \$20,000 and if that money came from Community Funds.

- e. Chad Ramos is a Nephew to Eric
- f. Eric T. Nelson is a Nephew to Eric
- g. Have received deed in lieu of foreclosure.

Note 17 - Soris Transaction

History

This first transaction commenced in 2002 when Frank Soris made an investment as mortgage holder in the Wyoming operations. Mr. Soris loaned \$2,300,000 to the Lynita Trust on a building that was to be used for Off Track Betting to support a Race Track owned at that time by the Nelson's. The operations in the building were outlawed and the operations had to cease.

The \$2,300,000 was an amount needed by Frank Soris to complete a 1031 exchange (Tax Code provision to defer taxes). The amount actually loaned is \$1,300,000 and a note payable to Lynita's Trust for \$1,000,000. Sometime between the date of the 1031 and 2010, the promissory note was transferred to the Eric L Nelson Nevada Trust. We have not received indication as to why the note was transferred out of Lynita's Trust or if any consideration was given in return for the transfer. Information has been received that interest of \$75,000 was received in 2009 relating to the \$1,000,000 note which is being serviced by U. S. Loan Servicing.

When the Off Track Betting business failed, Mr. Soris insisted on collateral to replace the building in Evanston, Wyoming. Eric Nelson then collateralized the note with property in Phoenix, Arizona. Upon failure of that collateral, Eric Nelson then collateralized the note with property in Mississippi. Since there was ongoing litigation in Mississippi, Mr. Soris again sought collateral for the amount due him. It was then, in early 2010, when Eric made a decision to take the better of the Banone properties in Arizona and transfer those rental properties to the Frank Soris Family Trust.

It was understood from Eric Nelson that there was a deal with Frank Soris that if the properties were to sell in excess of the \$1,300,000, Eric would be entitled to monies from such sales. In documents received there was a written agreement that upon the transfer of the Banone properties, the \$1,000,000.00 note made payable to the Eric L. Nelson Nevada Trust is cancelled and considered satisfied. We have not received further documentation as to why the note was cancelled or satisfied. We have yet to determine which position is current. Of course, if the properties sell for less than \$1,300,000, the concerns of the \$1,000,000 will be dispelled.

Current Situation

The cost of the current twenty properties transferred to Soris has a book value of \$737,018.67. Therefore the aggregate amount of collateral against a debt of \$1,300,000 leaves a contingent liability of \$562,981.33. In addition, Eric has pledged to use 8 lots from his investment in AZ-29 Gateway Lots, but actual lots are to be determined at a later date according to the February 19, 2010 agreement between Soris and Eric Nelson.

The contingent asset may or may not have value if the properties sell for more than \$1,300,000, depending on the outcome of the agreement to share or if the note has been cancelled.

The interest on the \$1,300,000 note is being paid by the rents collected on the properties.

At issue, Lynita believes Eric gave Soris the best properties from Banone. Eric agrees with that statement.

Note 18 - Nikki Cvintavich Note Receivable

This is a loan made by Eric Nelson to Nikki Cvintavich, an employee in Mississippi. This loan has no direct connection to the Mississippi investments. We have not received documentation evidencing if this note is collateralized by any type of property.

Note 19 - Family Loan (Chad Ramos)

This was money given to start several businesses. The businesses have all failed. This money was given to him prior to 01/01/2009 and should be considered as community participation and be eliminated as an issue.

It is recommended that this item be eliminated from any settlement.

Note 20 - Family Loan (Jesse Harber)

We have not received documentation relating to the terms and conditions of this receivable. As a result, we cannot determine a value of the outstanding amounts due or if there was or is any collateral against the receivable.

Note 21 - Autos/Vehicles

The values given by each party was from Kelly Blue Book. It has not been determined what was used as mileage, accessories, or wholesale or retail suggested prices.

Note 21a – Both parties have indicated the presence of several ATVs and snowmobiles.

It is recommended a determination by an independent third party at a selected date determined by the Court.

Note 22 - Tax Situation

It has been understood that the 2006 taxes were filed jointly. Thereafter the Federal Income Tax Returns have been filed as Married filing Separate. It has been stated that a 2006 refund in the approximate amount of \$110,125 is currently held by Eric Nelson's attorney in a separate bank account.

Note 23 – Bank Accounts

It is recommended that all of the Banking Accounts be brought up to a date determined by the Court and that all transactions be reviewed for subsequent transactions.

Note 24 - AZ-31 Gateway Lots

The property in this account consists of the following:

1. 29 parcels that are titled to the Lynita Trust.
2. 8 parcels where the Lynita Trust has a 25% interest, Harber Investments has a 25% interest, Louis Walter has a 25% interest, and Gary & Margaret Zahlen have a 25% interest.
3. 2 lots that were in foreclosure. As of the date of this report, we have not received documentation relating to the disposition of the foreclosure proceedings.
4. 7 lots from Joan Ramos. Joan Ramos filed bankruptcy and all lots were to be deeded back to Lynita's Trust. As of the date of this report, all seven lots are currently in the name of "Ramos Joan B Trustee".

Client Name	Description	File	Field
Search Text: "JOY COLE"			
Total finds for JOY COLE: 0			

Search Text: "AUTUMN COLE"

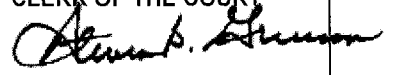
Total finds for AUTUMN COLE: 0

Search Text: "KATHERINE COLE"

Total finds for KATHERINE COLE: 0

EXHIBIT “2”

EXHIBIT “2”



RPLY

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Trustee of the ERIC L. NELSON NEVADA
9 *TRUST dated May 30, 2001*

DISTRICT COURT

COUNTY OF CLARK, NEVADA

12 ERIC L. NELSON,

13 Plaintiff

14 vs.

15
16 LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of the
17 ERIC L. NELSON NEVADA TRUST dated
May 30, 2001,

18 Defendants.

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

22 Cross-claimant,

23 vs.

24 LYNITA SUE NELSON,

25 Cross-defendant.
26

Case No.: D411537
Dept.: O

27 / / /
28

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

5 **AND**

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

12 Matt Klabacka, Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated
13 May 30, 2001, hereby files his Reply to Opposition to Motion to Enforce Supreme Court's Order
14 dated May 25, 2017; Motion to Hold Lynita S. Nelson in Contempt for Violation of September 22,
15 2014 Order; and for Attorneys' Fees and Costs and Opposition to Countermotion for Final
16 Judgment Consistent with the Nevada Supreme Court's Remand or, in the Alternative, for
17 Affirmation of Joint Preliminary Injunction, for a Receiver to Manage the Property Pending Final
18 Judgment, for Updated Financial Disclosures and Exchange of Financial Information, and for Sale
19 of Property for Payment of Attorneys' Fees and Costs.

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

23 DATED this 4th day of August, 2017.

24 SOLOMON DWIGGINS & FREER, LTD.

25 By: /s/ Jeffrey P. Luszeck

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TRUST dated May 30, 2001*