

Case No. _____

In the Supreme Court of Nevada

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

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of
the State of Nevada, in and for the County of
Clark; and THE HONORABLE TIMOTHY C.
WILLIAMS, District Judge,

Respondents,

and

SEPTEMBER TRUST, DATED MARCH 23, 1972;
GERRY R. ZOBRIST AND JOLIN G. ZOBRIST, as
trustees of the GERRY R. ZOBRIST AND JOLIN G.
ZOBRIST FAMILY TRUST; RAYNALDO G. SANDO-
VAL AND JULIE MARIE SANDOVAL GEGEN, as
Trustees of the RAYNALDO G. AND EVELYN A.
SANDOVAL JOINT LIVING AND DEVOLUTION
TRUST DATED MAY 27, 1992; DENNIS A. GEGEN
and JULIE S. GEGEN, husband and wife, as
joint tenants, ROBERT Z. DISMAN; and YVONNE
A. DISMAN,

Real Parties in Interest.

Electronically Filed
Apr 11 2022 03:29 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

PETITIONERS' APPENDIX

VOLUME 7

PAGES 1501-1750

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DANIEL F. POLSENBERG (SBN 2376)
DAN R. WAITE (SBN 4078)
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3993 Howard Hughes Parkway, Suite 600
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Attorneys for Petitioners

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CERTIFICATE OF SERVICE

I certify that on April 11, 2022, I submitted the foregoing “Petitioners’ Appendix” for filing *via* the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

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

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

*Attorneys for Real Parties in Interest
September Trust, dated March 23,
1972, Gerry R. Zobrist and Jolin G.
Zobrist, as trustees of the Gerry R. Zo-
brist and Jolin G. Zobrist Family
Trust, Raynaldo G. Sandoval and Ju-
lie Marie Sandoval Gegen, as trustees
of the Raynaldo G. and Evelyn A.
Sandoval Joint Living and Devolution
Trust dated May 27, 1992, and Dennis
A. Gegen and Julie S. Gegen, husband
and wife, as joint tenants*

*Attorneys for Real Parties in Interest
Robert Z. Disman and Yvonne A. Dis-
man*

I further certify that I served a true and correct copy of this document by hand delivery, to the following:

The Honorable Timothy C. Williams
Eighth Judicial District Court Judge, Department XVI
Regional Justice Center
200 Lewis Ave., Las Vegas, NV 89155

Respondent

/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP

1 **IT IS HEREBY ORDERED ADJUDGED AND DECREED** that Plaintiffs’ Motion for Order
2 to Show Cause Why the Lytle Trust Should Not Be Held in Contempt for Violation of Court Orders, as
3 well as the Joinders thereto filed by the Boulden Trust, the Lamothe Trust, and the Dismans, are
4 GRANTED.

5 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Lytle Trust
6 violated the May 2018 Order.

7 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Lytle Trust
8 is in contempt of the May 2018 Order.

9 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Lytle Trust
10 shall pay a \$500 penalty to each movant for violation of the May 2018 Order; specifically, \$500 payable
11 to the September Trust, \$500 payable to the Zobrist Trust, \$500 payable to the Sandoval Trust, \$500
12 payable to the Gegens, and \$500 payable to the Dismans.

13 ///

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

1 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the September
 2 Trust, Zobrist Trust, Sandoval Trust, Gegens, and Dismans, may file applications for their reasonable
 3 expenses, including, without limitation, attorney's fees, incurred by the party as a result of the contempt.
 4 The Court will consider such applications on the merits.

5 **IT IS SO ORDERED.**

6 Dated this 22 day of May, 2020.

7 
 8 DISTRICT COURT JUDGE CG

9 **Submitted by:**

10 **CHRISTENSEN JAMES & MARTIN**

11 /s/ Wesley J. Smith

12 Wesley J. Smith, Esq.
 13 Nevada Bar No. 11871
 14 Laura J. Wolff, Esq.
 15 Nevada Bar No. 6869
 16 7440 W. Sahara Ave.
 17 Las Vegas, NV 89117
 18 *Attorneys for Plaintiffs September Trust,*
 19 *Zobrist Trust, Sandoval Trust, and*
 20 *Dennis & Julie Gegen*

Approved as to Form and Content by:

FIDELITY NATIONAL LAW GROUP

/s/ Christina H. Wang

CHRISTINA H. WANG, ESQ.
 Nevada Bar No. 9713
 8363 W. Sunset Road, Suite 120
 Las Vegas, Nevada 89113
Attorneys for Robert & Yvonne Disman

16 **Reviewed by Not Approved by:**

17 **LEWIS ROCA ROTHBERGER CHRISTIE**
 18 **LLP**

19 Reviewed But Not Approved

20 DAN R. WAITE, ESQ.
 21 Nevada Bar 4078
 22 3993 Howard Hughes Parkway, Suite 600
 23 Las Vegas, Nevada 89169
 24 *Attorneys for Lytle Trust*

RE: Case No. A-16-747800-C - Boulden v. Lytle - ORDR - Proposed Order Granting Plaintiffs' Motion for Order to Show Cause

Wang, Christina <Christina.Wang@fnf.com>

Mon 5/18/2020 9:52 AM

To: Wesley Smith <wes@cjmlv.com>

Cc: Engelman, Lace <Lace.Engelman@fnf.com>

Approved – thanks.

Christina H. Wang

Litigation Counsel

Fidelity National Law Group

8363 W. Sunset Road, Suite 120

Las Vegas, Nevada 89113

702-667-3000 (Main)

702-667-3002 (Direct)

702-938-8721 (Fax)

christina.wang@fnf.com

PLEASE NOTE THAT OUR OFFICE HAS MOVED TO THE ABOVE ADDRESS.

The Law Division of Alamo Title Insurance, Chicago Title Insurance Co., Commonwealth Land Title Insurance Co., Fidelity National Title Insurance Co., and Fidelity National Title Group, Inc.

THIS ELECTRONIC MAIL MESSAGE AND ANY ATTACHMENTS ARE INTENDED ONLY FOR THE USE OF THE ADDRESSEE(S) NAMED ABOVE AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF YOU ARE NOT AN INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THIS E-MAIL TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU RECEIVED THIS E-MAIL MESSAGE IN ERROR, PLEASE IMMEDIATELY NOTIFY THE SENDER BY REPLYING TO THIS MESSAGE OR BY TELEPHONE. THANK YOU.

From: Wesley Smith <wes@cjmlv.com>

Sent: Monday, May 18, 2020 9:45 AM

To: Wang, Christina <Christina.Wang@fnf.com>

Cc: Engelman, Lace <Lace.Engelman@fnf.com>

Subject: Re: Case No. A-16-747800-C - Boulden v. Lytle - ORDR - Proposed Order Granting Plaintiffs' Motion for Order to Show Cause

IMPORTANT NOTICE - This message sourced from an external mail server outside of the Company.

Christina,

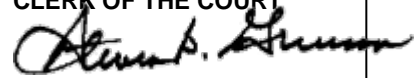
Per our discussion, can you please approve this version which adds the date to footnote 2?

Wes Smith

Christensen James & Martin

39

39



ASTA

JOEL D. HENRIOD

Nevada Bar No. 8492

DANIEL F. POLSENBERG

Nevada Bar No. 2376

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*Attorneys for Defendants Trudi Lee Lytle and
John Allen Lytle, as Trustees of the Lytle Trust*

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

TRUDI LEE LYTLE; and JOHN ALLEN
LYTLE, as trustees of the Lytle Trust,
DOES I through X, inclusive, and ROE
CORPORATIONS I through X,

Defendants.

Case No. A-16-747800-C

Dep't No. 16

CASE APPEAL STATEMENT

SEPTEMBER TRUST, DATED MARCH 23,
1972; GERRY R. ZOBRIST and JOLIN G.
ZOBRIST, as Trustees of the Gerry R.
Zobrist and Jolin G. Zobrist Family
Trust; RAYNALDO G. SANDOVAL and
JULIE MARIE SANDOVAL GEGEN, As
Trustees of the Raynaldo G. and
Evelyn A. Sandoval Joint Living and
Devolution Trust Dated May 27, 1992;
and DENNIS A. GEGEN and JULIE S.
GEGEN, husband and wife, as joint
tenants,

Plaintiffs,

Consolidated with:

Case No. A-17-765372-C

Dep't No. 16

v.

TRUDI LEE LYTLE; and JOHN ALLEN
LYTLE, as trustees of the Lytle Trust,
JOHN DOES I through V, inclusive, and
ROE ENTITIES I through V, inclusive,

Defendants.

1. Name of appellants filing this case appeal statement:

Defendants Trudi Lee Lytle and John Allen Lytle, as trustees
of the Lytle Trust

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable Timothy C. Williams

3. Identify each appellant and the name and address of counsel for each
appellant:

*Attorneys for Appellants Trudi Lee Lytle and
John Allen Lytle, as Trustees of the Lytle Trust*

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

4. Identify each respondent and the name and address of appellate counsel,
if known, for each respondent (if the name of a respondent's appellate
counsel is unknown, indicate as much and provide the name and address
of that respondent's trial counsel):¹

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

¹ Plaintiffs Marjorie B. Boulden, trustee of the Marjorie B. Boulden Trust, and
Linda Lamothe and Jacques Lamothe, trustees of the Jacques & Linda
Lamothe Living Trust would be listed as respondents, but they filed a
"Withdrawal of Joinder on Plaintiffs September Trust, et al.'s Motion for an
Order to Show Cause Why the Lytle Trust Should Not be Held in Contempt for
Violation of Court Orders" on May 14, 2020 as a result of a settlement
agreement reached with the Lytle Trust. (Ex. A.)

KEVIN B. CHRISTENSEN
 WESLEY J. SMITH
 CHRISTENSEN JAMES & MARTIN
 7440 W. Sahara Avenue
 Las Vegas, Nevada 89117
 (702) 255-1718

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

CHRISTINA H. WANG
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 8363 W. Sunset Road, Suite 120
 Las Vegas, Nevada 89113
 (702) 667-3000

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Retained counsel

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained counsel

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

N/A

9. Indicate the date the proceedings commenced in the district court, *e.g.*, date complaint, indictment, information, or petition was filed:

"Complaint," filed December 8, 2016 in case no. A-16-7476800-C.

"Complaint," filed November 30, 2017 in case no. A-17-765372-C.

Case no. A-17-765372-C was consolidated with case no. A-16-7476800-C on February 28, 2018.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

In other lawsuits, the defendant Lytle Trust obtained three judgments (totaling approx. \$1.8 million) against the Rosemere Estate Property Owners Association ("Association"). The Lytle Trust is a member of the Association. This action stems from a dispute over the validity and legal effect of abstracts of judgments the Lytle Trust recorded against certain residential property owned by other Association members. The district court (Judge T. Williams) granted summary judgment in favor of plaintiffs and entered a permanent injunction against the Lytle Trust precluding action to enforce their judgments directly against the other Association members (the "May 2018 order"). The Dismans were added as parties to the litigation when they purchased the Boulden property.

Separately, the Lytle Trust later filed an action in the district court (assigned to Judge J. Kishner) for the appointment of a receiver over the judgment debtor Association ("Receiver Action"). Judge Kishner appointed a Receiver over the Association and empowered the Receiver to, *inter alia*, take action to satisfy its judgment liability to the Lytle Trust. The other Association homeowners, who were not parties to the Receiver Action, filed a motion in the underlying action with Judge Williams seeking to hold the Lytle Trust in contempt for violating the permanent injunction by seeking the appointment of a Receiver.

The Lytle Trust appeals from the post-judgment order holding it in contempt for purportedly violating the May 2018 order by seeking the appointment of a receiver, and awarding penalties and expenses to the September Trust, the Zobrist Trust, the Sandoval Trust, the Gegens, and the Dismans.

11. Indicate whether the case has previously been the subject of an appeal or an original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding.

Lytle v. Boulden, Case No. 73039

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

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

Lytle v. Disman, Case No. 79753

Lytle v. Boulden, Case No. 79776

12. Indicate whether this appeal involves child custody or visitation:

This case does not involve child custody or visitation.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

Undersigned counsel is not aware of any circumstances that make settlement impossible.

1
2 Dated this 22nd day of June, 2020.

3 LEWIS ROCA ROTHGERBER CHRISTIE LLP

4
5 By: /s/Joel D. Henriod

6 JOEL D. HENRIOD (SBN 8492)
7 DANIEL F. POLSENBERG (SBN 2376)
8 DAN R. WAITE (SBN 4078)
9 3993 Howard Hughes Parkway, Suite 600
10 Las Vegas, Nevada 89169
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12 *Attorneys for Defendants Trudi Lee Lytle and*
13 *John Allen Lytle, as Trustees of the Lytle*
14 *Trust*

001510

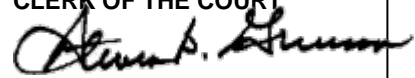
/s/ Lisa M. Noltie
An Employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP

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

EXHIBIT A

001511

EXHIBIT A



DANIEL T. FOLEY, ESQ.
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*Attorneys for the Boulden and
Lamothe Plaintiffs.*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

SEPTEMBER TRUST, DATED MARCH 23,
1972; et al,

Plaintiffs

v.

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

Defendants.

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

**WITHDRAWAL OF JOINDER
ON PLAINTIFFS SEPTEMBER
TRUST ET. AL.'S MOTION FOR
AN ORDER TO SHOW CAUSE
WHY THE LYTLE TRUST
SHOULD NOT BE HELD IN
CONTEMPT FOR VIOLATION
OF COURT ORDERS**

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

1 Plaintiffs Marjorie B. Boulden, Trustee Of The Marjorie B. Boulden Trust (the “Boulden
2 Trust”), Linda Lamothe And Jacques Lamothe, Trustees Of The Jacques & Linda Lamothe
3 Living Trust (“Lamothe Trust”) by and through their attorneys Foley & Oakes, PC, having
4 entered into a settlement agreement with the Lytle Trust with respect to, among other things,
5 resolving the Lytle Trust’s Appeal of this Court’s Order granting the Boulden Trust’s and
6 Lamothe Trust’s Attorneys’ Fees and Costs, hereby provide Notice to the Court and all interested
7 parties that they hereby withdraw their Joinder filed in this case on March 5, 2020, and
8 accordingly waive all relief orally awarded by the Court associated with their Joinder.
9

10 Dated this 14th day of May 2020.

11
12 FOLEY & OAKES, PC

13 **By: /s/ Daniel T. Foley**

14 Daniel T. Foley, Esq.
15 1210 So. Valley View Blvd., Suite # 208
16 Las Vegas, NV 89102
17 (702) 384-2070
18 *Attorneys for the Boulden and*
19 *Lamothe Plaintiffs.*
20
21
22
23
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27

CERTIFICATE OF SERVICE

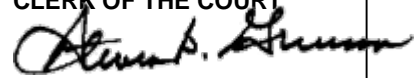
Pursuant to N.R.C.P. Rule 5(b), I certify that I am an employee of Foley & Oakes, PC and that on this 14th day of May 2020, I caused this document to be served pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system.

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

/s/ Liz Gould
An employee of Foley & Oakes PC

40

40



CSERV
JOEL D. HENRIOD
Nevada Bar No. 8492
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*Attorneys for Defendants Trudi Lee Lytle and
John Allen Lytle, as Trustees of the Lytle Trust*

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

TRUDI LEE LYTLE; and JOHN ALLEN
LYTLE, as trustees of the Lytle Trust,
DOES I through X, inclusive, and ROE
CORPORATIONS I through X,

Defendants.

SEPTEMBER TRUST, DATED MARCH 23,
1972; GERRY R. ZOBRIST and JOLIN G.
ZOBRIST, as Trustees of the Gerry R.
Zobrist and Jolin G. Zobrist Family
Trust; RAYNALDO G. SANDOVAL and
JULIE MARIE SANDOVAL GEGEN, As
Trustees of the Raynaldo G. and
Evelyn A. Sandoval Joint Living and
Devolution Trust Dated May 27, 1992;
and DENNIS A. GEGEN and JULIE S.
GEGEN, husband and wife, as joint
tenants,

Plaintiffs,

v.

TRUDI LEE LYTLE; and JOHN ALLEN

Case No. A-16-747800-C

Dep't No. 16

AMENDED CERTIFICATE OF SERVICE

Consolidated with:

Case No. A-17-765372-C

Dep't No. 16

LYTLE, as trustees of the Lytle Trust,
JOHN DOES I through V, inclusive, and
ROE ENTITIES I through V, inclusive,

Defendants.

I hereby certify that on June 22, 2020, defendants Trudi Lee Lytle and John Allen Lytle, as trustees of the Lytle Trust, served a "Notice of Appeal" and "Case Appeal Statement" through the Court's electronic filing system to the persons and addresses listed below:

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

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

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*Attorneys for Marjorie B. Boulden, trustee
of the Marjorie B. Boulden Trust, and
Linda Lamothe and Jacques Lamothe,
trustees of the Jacques & Linda Lamothe
Living Trust*

/s/ Jessie M. Helm
An Employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP

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A-16-747800-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

July 02, 2020

A-16-747800-C Marjorie B. Boulden Trust, Plaintiff(s)
vs.
Trudi Lytle, Defendant(s)

July 02, 2020 09:00 AM Defendant Lytle Trust's Motion for Clarification and Ex Parte
Request for Order Shortening Time

HEARD BY: Williams, Timothy C. COURTROOM: RJC Courtroom 03H

COURT CLERK: Darling, Christopher

RECORDER:

REPORTER:

PARTIES PRESENT:

Christina H. Wang	Attorney for Counter Defendant, Cross Claimant, Other Defendant
Dan R Waite	Attorney for Counter Claimant, Defendant, Trustee
Wesley J. Smith, ESQ	Attorney for Other Plaintiff

JOURNAL ENTRIES

APPEARANCES CONTINUED: Court Reporter, Michael Bouley, present.

All counsel present telephonically. Arguments by counsel. Mr. Waite advised he intends to file supersedeas cash bond relating to recent contempt order. Mr. Smith advised no objection. Court directed Mr. Waite to file appropriate motion in that regard. As to Motion for Clarification, Court stated ITS FINDINGS and ORDERED, Motion DENIED. Court directed Mr. Smith or Ms. Wang to prepare the order and circulate; if parties cannot agree on form and content, may submit competing orders. Proposed order(s) to be submitted electronically to DC16Inbox@clarkcountycourts.us.

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001518

BEFORE THE HONORABLE TIMOTHY C. WILLIAMS

SHORTENING TIME

July 2, 2020

9:20 a.m.

001518

1 TELEPHONIC APPEARANCES:

2 On behalf of the Zobrist Trust, September Trust, Sandoval
3 Trust, Dennis and Julie Gegen

4 Mr. Wesley Smith, Esq.

5

6 On behalf of defendant Lytle Trust

7 Mr. Dan Waite, Esq.

8

9 On behalf of Robert and Yvonne Disman

10 Ms. Christina Wang, Esq.

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1 THE COURT: Marjorie B. Boulden Trust versus
2 Trudi Lytle, et al. Let's go ahead, place your
3 appearances on the record.

4 MR. SMITH: This is Wesley Smith for the Zobrist
5 Trust, September Trust, Sandoval Trust, Dennis and Julie
6 Gegen.

7 THE COURT: Okay.

8 MR. WAITE: Good morning, Your Honor. Dan Waite
9 for the defendant Lytle Trust. We would ask this matter
10 be reported.

11 THE COURT: All right. And we'll do that.

12 Who else do we have?

13 MS. WANG: Good morning, Your Honor. This is
14 Christina Wang on behalf of Robert and Yvonne Disman.

15 THE COURT: All right. Good morning.

16 And is that it, Mr. Clerk?

17 THE CLERK: For check-ins, yes.

18 THE COURT: All right. That's it for check-ins.

19 And all right. For the record, it's my
20 understanding that we have a defendant Lytle Trust motion
21 for clarification on a order shortening time.

22 Okay. With that in mind, we'll go ahead. And
23 Mr. Waite, sir?

24 MR. WAITE: Thank you, Your Honor. For the
25 record, this is Dan Waite.

1 Your Honor, as you've read our motion, you've
2 noticed this is not a motion where we're advocating for
3 any particular position. Instead, the Lytle Trust, we
4 are simply looking for some guidance as it tries to go
5 forward and balance the right to collect those judgments
6 that it's obtained with its obligation to, of course,
7 comply with this Court's permanent injunctions.

8 So, Your Honor, I don't really have argument.
9 We're simply asking the Court to assist us to avoid being
10 held in contempt again by clarifying what judgment
11 creditor rights the Lytle Trust can or cannot exercise
12 without violating the permanent injunction. Again, in
13 our moving papers, we included several examples of the
14 kinds of questions we have.

15 I would like to say, Your Honor, that even
16 though the Lytle Trust was held in contempt, the Lytle
17 Trust does respect this Court's permanent injunction, and
18 indeed it is for that very reason and because of that
19 very respect that the Lytle Trust asks for clarification
20 from these questions, so they don't have to act at their
21 own peril, so that they can try to navigate the waters
22 and avoid being held in contempt again.

23 So they would like those questions answered or
24 maybe more generally the Court to clarify the general or
25 guiding opinions so that they can, again, avoid being

1 held in contempt again as they move forward to try to
2 collect their judgment.

3 That's it. I don't really have argument.

4 THE COURT: Thank you, sir.

5 We'll go to counsel on behalf of the plaintiffs.

6 MR. SMITH: Yes, Your Honor.

7 This is Wesley Smith, for the record, counsel
8 for the plaintiffs.

9 We did file opposition to this motion simply
10 because we feel that the Court has already given
11 considerable guidance on what its order means. And we
12 pointed out in our opposition the places in the hearing
13 transcript from the last hearing that we had on this
14 matter where you granted the motion and order to show
15 cause. We pointed out in that transcript where you had
16 clarified and answered the question that the Lytles had,
17 the Lytle Trust had proposed. And then when we submitted
18 a proposed order that incorporated those statements, we
19 feel that also clarified your order as well when you
20 actually signed that order.

21 So we felt that it wasn't necessary to even have
22 this discussion. You gave considerable guidance in that
23 on what to do. And also, we're worried that the Court is
24 being asked to engage in essentially providing legal
25 advice to the Lytle Trust on how to act in the future,

1 which we don't think would be appropriate.

2 THE COURT: All right. I understand, sir.

3 Miss Wang?

4 MS. WANG: Your Honor, we reiterate Mr. Smith's
5 concerns and have nothing to add myself. Thank you.

6 THE COURT: All right. Mr. Waite, you get the
7 last word, sir.

8 MR. WAITE: Thank you, Your Honor.

9 I would point out that the interesting
10 procedural posture of this motion, Mr. Smith is correct
11 in that the motion for clarification was filed before the
12 Court selected between the competing orders and signed
13 the Plaintiff's proposed order. So concerning the
14 Plaintiff's proposed order, I would tend to agree that
15 that part of the motion for clarification seems to have
16 been answered. That portion that seems to have been
17 answered is the question of whether the Court stripped
18 the Lytle Trust with all of its creditor rights. And by
19 signing the Plaintiff's proposed order, it appears the
20 Court has answered that question in the negative; that
21 no, the Court has not stripped the Lytle Trust of all of
22 its judgment creditor rights.

23 But what still remains, Your Honor, it does
24 appear that because the Lytle Trust was held in contempt
25 for seeking the appointment of a receiver, which is a --

1 which is one of many judgment creditor rights that the
2 Court's stripped away from that judgment creditor right.

3 And so the question becomes in trying to, again,
4 I will use the word navigate through these waters as it
5 tries to go forward and collect its judgment while at the
6 same time respecting this Court's order and wanting to
7 comply with it, and avoid being held in contempt of
8 court, there are other judgment creditor rights available
9 to it. It very candidly guessed wrong as it related to
10 the receivership and does not want to act at its peril
11 again.

12 And so we do ask for clarification. We cited
13 some cases. We believe that this is the appropriate
14 approach; that instead of just cavalierly moving forward,
15 that it is appropriate to ask for the Court's guidance.
16 And so we seek that. We seek that guidance.

17 This isn't asking the Court to provide the Lytle
18 Trust with legal advice. That's what I do. This is
19 actually, if anything, it is giving guidance to me as
20 counsel for the Lytle Trust so that I can advise. Quite
21 candidly, at this point, I am at a loss to explain to
22 them why appointment of a receiver was in violation of
23 the order. And if that was in violation of the order,
24 then my assumption would be all other judgment creditor
25 rights would be against the permanent injunction, but

1 that does not appear to be the case in light of the
2 Court's entry of the Plaintiff's proposed order.

3 So I'm just at a loss, very candidly, Your
4 Honor, and we seek that clarification, that guidance,
5 because we do want to comply with this Court's order.

6 THE COURT: And I understand. And to be candid
7 with everyone, I'm kind of at a loss, too. And the
8 reason why I say that is this: From time to time, I get
9 motions for clarification. I sit back and I'm in a
10 general sense a rules person. And what I mean by that is
11 this: Throughout my tenure as a trial judge, I have
12 always tried to follow the mandate of the Nevada Rules of
13 Civil Procedure, or more specifically, any statutes that
14 might impact my decision-making as a trial judge. Right?

15 And understand, just as important, too, I know
16 lawyers will say well, Judge, you should do this or that.
17 And I always look back to the statutes and the Rules of
18 Procedure as a safe haven as a trial judge.

19 Just as important, too, I do understand that if
20 you look at Nevada Rules of Civil Procedure, most of the
21 rules, if not all, are not necessarily self-executing.
22 Probably the one rule that would be self-executing would
23 be statute of limitations. Right? Except for even under
24 certain circumstances, there might be issues of actual or
25 constructive notice.

1 So my point is this: The rules are never
2 clear-cut. There's a lot of discretion given to the
3 trial judges. But just as important, the trial judges
4 can't do whatever he or she wants to do.

5 The reason I bring that up, I have always
6 struggled with what is a motion for clarification.
7 Right? The reason I say that is this: It's nowhere set
8 forth in the Nevada Rules of Civil Procedure. And the
9 reason why I think that's important, understand this,
10 when it comes to issues regarding the exercise of
11 discretion from the trial court, we always have standards
12 we can look to, and look to other cases, and specifically
13 maybe some of the factors that are set forth by the
14 Nevada Supreme Court.

15 You know, and there's countless and countless
16 examples of that. When it comes to, for example, service
17 of process pursuant to (4)(i), and we know if you don't
18 serve within 120 days, your case shall be dismissed, for
19 example. I think they changed this. It's not (4)(i) any
20 more. Might be (4)(b). I forget where it's at. Bottom
21 line is, unless the Court determines that there is good
22 cause.

23 How do I do that? I look to potentially
24 Scrimmer, Saavedra. There is factors I consider, then I
25 make a decision. Right? It's like that throughout all

1 the Rules of Civil Procedure. And so my first point is,
2 what do I do with a motion for clarification when it
3 comes to these issues?

4 Secondly, being really more specific in this
5 case, I did have a chance to go back and have a copy of
6 the order that I issued. But then I look at some of my
7 comments that I made at the prior hearing that were set
8 forth in the opposition, starting at page 3, and I think
9 it's the opposition to the motion to the defendant Lytle
10 Trust's motion for clarification that was filed by
11 Mr. Smith in this matter.

12 And the reason why I bring that up, I mean, for
13 example, he starts setting forth the specific exchanges
14 that were discussed at the time of the hearing, and they
15 start on page 3 of his opposition, and so on. And, when
16 I look at it, it appeared to me that I was pretty clear
17 in my responses as this matter is concerned.

18 And what I mean by that is this, for example. I
19 think starts at line 21, this is from me: Well, the
20 Association wasn't a party.

21 But the bottom line is this: I stripped the
22 Lytle Trust of their ability and right to enforce those
23 judgments vis-a-vis the homeowners association. That
24 seems pretty clear. And then there is other discussions
25 as they kind of go through this.

1 And then I don't want mind telling everybody
2 this, too: If, for example, is it proper for the
3 Court -- and I made a ruling as far as my decision is
4 concerned and that can be appealed and I have no problem
5 with that. I always respect a lawyer's right to do that.
6 But am I asking to be -- determine the rights of parties
7 as a result of this litigation? Is this some sort of
8 declaratory relief request or something like that, right?

9 And, I don't see -- I mean, you know, I'm
10 struggling with that because at the end of the day, what
11 I did in this case, of course I'm going to let everybody
12 comment, because I'm always going to tell you what I'm
13 thinking. I think everybody here has appeared in front
14 of me on multiple occasions. But you know, those are the
15 types of things I think about.

16 And more importantly, as far as this case is
17 concerned, I go back and the thrust and focus of all my
18 decisions in this matter is based upon the historical
19 history of this case, and more specifically, the findings
20 of facts, conclusions of law, and order granting
21 Plaintiff's motion for partial summary judgment that was
22 entered back on April 26, 2017. And so to me, it appears
23 to be pretty clear. Right? And that's just kind of how
24 I see it.

25 But of course I'm not going to preclude anybody

1 from commenting on the record. I always permit lawyers
2 to give their comments and argue their points. But at
3 this point, I'm just wondering what else can I do?
4 Right? Unless --

5 MR. WAITE: Your Honor, Dan Waite. May I
6 respond?

7 THE COURT: That's Mr. Waite. Right? For the
8 court reporter.

9 MR. WAITE: Dan Waite.

10 Within this motion for clarification, I'd like
11 to ask for a technical point of clarification. I believe
12 when you were just referring to the opposition, and I
13 think you were reading from page 3, and you were
14 referring to the vis-a-vis the homeowners language, if I
15 heard Your Honor correctly, I think you said vis-a-vis
16 the homeowners association. And I just want to clarify
17 that that's not what -- that that's not what appears in
18 the brief and that's not what you meant to say, if that's
19 what you said. In other words, I think you added the
20 word association after the word homeowners?

21 THE COURT: Well, whatever's in the brief is in
22 the brief.

23 MR. WAITE: Okay. Thank you. Thank you, Your
24 Honor. I just didn't want anyone to argue later that
25 there was expansion; that the Court clarified by

1 expanding it to include against the Association this
2 morning.

3 Okay. So going to Your Honor's point, Your
4 Honor, you of course have inherent authority to make your
5 orders clear. And with all due respect, you focused on
6 what was in the opposition from the transcript of the
7 hearing. I trust Your Honor has reviewed in the original
8 motion, my original motion for clarification, where I set
9 forth all of the other recitations both before and after
10 the one that is focused on in the opposition. With all
11 due respect, Your Honor, it's not so clear.

12 And that's -- that is the reason for this motion
13 is because it appeared that the Court made comments that
14 could be interpreted in all sorts of different ways. And
15 very candidly, there is also comments by plaintiff's
16 counsel during the hearing that seemed to suggest we had
17 certain rights and not others. And you know, we use the
18 examples and just want to be clear, if there is an
19 exercise of a judgment creditor right that has an
20 indirect impact on the homeowners -- and pause there for
21 a moment because, Your Honor, given the nature of this
22 association, small size and what it is, almost every
23 exercise -- I might be hard-pressed to identify any
24 exercise of a right against the Association itself that
25 wouldn't have an indirect impact upon the homeowners. I

1 use the example of a gate repair that the homeowners
2 contribute to, and the Lytle Trust executes on the
3 Association's bank account and captures those assessments
4 from the homeowners so that the gate doesn't get
5 repaired. Or they have to contribute again and pay
6 again, and that affects them, in which case the Lytle
7 Trust might execute on the Association's bank account
8 again, and repeat itself over and over again.

9 That's just one example. We give several other
10 examples. We are looking for guidance, Your Honor --

11 THE COURT: I have a response.

12 MR. WAITE: -- subject the Lytle Trust to a
13 contempt hearing -- a contempt finding again, or is that
14 okay?

15 THE COURT: Mr. Waite, I'm listening to you but
16 I do have a response for that. Because, for the record,
17 I did go back and look at my April 26, 2017, order. And
18 understand this: At this point of the litigation, that
19 order has been sitting in place for over three years. It
20 was subject to review by the Nevada Supreme Court, and
21 withstood appellate scrutiny. Right? And we can all
22 agree.

23 Here's my point: Take a look at page 7 of the
24 order that was signed by me back on April 25th, 2017.
25 Over three years ago. And it's my understanding that the

1 Lytle Trust, et cetera, they were parties to that order.

2 Correct? We can all agree.

3 And, when you -- I think line 1 of page 7 is
4 crystal clear regarding what actions can and cannot be
5 taken. Because this is what I set forth in the order
6 that was signed over three years ago: Quote, It is
7 hereby further ordered, adjudged, and decreed, that the
8 defendants are permanently enjoined from taking any
9 action in the future against the plaintiffs or their
10 properties based upon the Rosemere LPA litigation.
11 Right? And that, to me, that appears to be pretty clear
12 as to what you can't do.

13 So in this case, what did they do? They went
14 out and took some action by attempting to have a receiver
15 appointed because of the insolvency of the Association, I
16 think. Something like that.

17 But my point is this: They took action. And
18 ultimately, they are attempting, whether direct or
19 indirect, future action against the plaintiff or their
20 properties based upon the Rosemere LPA litigation. To
21 me, that seems pretty clear.

22 MR. WAITE: Your Honor, Dan Waite speaking
23 again.

24 I think that that would be clear. The Lytle
25 benefit, Your Honor, I would interpret what you're just

1 saying, and I think trying to clarify, or at least I'm
2 trying to get clarification, go back to my \$80 fix the
3 gate example, the Lytle Trust could not execute on the
4 Association's bank account in that situation because that
5 would be any action that would be some action that would
6 have an impact on the homeowners under my hypothetical.

7 Am I understanding correctly, Your Honor?

8 THE COURT: I think, I don't know how you're
9 interpreting that, but I think that specific provision
10 under the order is pretty clear because it says this:
11 That defendants are permanently enjoined from taking any
12 action in the future against the plaintiffs or their
13 properties based upon what? The Rosemere LPA litigation.
14 Right?

15 MR. WAITE: And so clearly direct action against
16 the plaintiffs.

17 THE COURT: That's not what I said. It says any
18 action. That's pretty broad.

19 MR. WAITE: Even any action that has an indirect
20 impact upon the homeowners or their properties, is that
21 what I'm to understand?

22 THE COURT: I can only interpret. I'm just
23 looking right here. And this is -- if there was supposed
24 to be some sort of clarification as to the thrust, scope,
25 and nature of my order, that should have been done three

1 years ago. Right? Of course I would have heard a motion
2 for reconsideration.

3 But I think, and I'll let the other parties
4 comment, too, any action means any action. Right? It's
5 pretty broad.

6 MR. WAITE: It's pretty broad and --

7 (Audio garbled.)

8 THE COURT: But sir, say that again. Because I
9 want to make sure the record is clear, because I think
10 you were breaking up in the transmission. As a result,
11 Mr. Waite, the court reporter couldn't get that, your
12 last statement. But I want to make sure we take our
13 time, sir, so you can set that forth for the record.

14 MR. WAITE: Your Honor, I appreciate that.

15 Again, for the record, this is Dan Waite.

16 With all due respect, Your Honor, and I know you
17 respect me. You've said that. And I hope you know that
18 I highly respect you. We have practiced against each
19 other in years gone by. But with all due respect, Your
20 Honor, it's not as clear to me as it seems to be to you
21 what your orders mean. We can all read what they say.
22 But what they mean is what we're trying to get some
23 clarification upon. And based on -- I'm trying to
24 ascertain whether your permanent injunction means that
25 the Lytle Trust -- I don't think there is any doubt the

1 Lytle Trust cannot take any direct action against the
2 homeowners or their properties pursuant to or trying to
3 enforce or record their judgments that they obtained in
4 those litigations.

5 The real question boils down to can they take
6 action to try to collect their judgments if those actions
7 have an indirect impact upon the homeowners. And what
8 Your Honor was just saying and quoting from the 2017
9 order, which I apologize, I don't have in front of me,
10 but you emphasized the any action language. And given
11 the nature and size of this association, I don't believe
12 that there is any action that the Lytle Trust could take
13 in trying to enforce its judgments that would not have an
14 indirect impact on the homeowners or their properties.

15 Therefore, it feels logical to me that the Lytle
16 Trust cannot do anything to enforce its judgments,
17 because anything to enforce its judgment would either
18 have a direct impact or an indirect impact upon the
19 homeowners or the properties, which this Court has
20 enjoined.

21 That's what I'm trying to say, Your Honor.
22 That's what I'm hearing Your Honor say. I'm just not
23 sure if I'm hearing it correctly or understanding it
24 correctly. It's entirely possible that I'm not hearing
25 or understanding it correctly. But it's for that reason

1 that we're seeking clarification.

2 Because I don't want the Lytle Trust to be held
3 in contempt again. I want them to comply with this
4 Court's orders. But I also want them to be able to try
5 to collect their judgments if they can do so. And with
6 all due respect, that is like walking through a land
7 mine. But it can be done. Or maybe Your Honor is saying
8 it cannot be done. I don't know

9 THE COURT: Well, I can tell you this: It's
10 important to read the entire order. I can say that. And
11 for example, if you take a look at the conclusions of law
12 that once again have withstood scrutiny by our Supreme
13 Court, I start out right here on page 4 of my order,
14 paragraph 21, which would be, I guess, statement 2, a
15 limited purpose association NRS 116-3117 is not
16 applicable to the association.

17 Then I go to section 2 -- section 3 that starts
18 I think between 23 and 24. As a result of the Rosemere
19 LPA litigation, the amended CC&Rs were judicially
20 declared to be improperly adopted and recorded. The
21 amended CC&Rs are invalid and have no force and effect,
22 and were declared void ab initio. Void ab initio. Right
23 from the very beginning.

24 Then we go to paragraph number 4 at the last
25 line. The Plaintiffs were not parties to the Rosemere

1 LPA litigation. We go to the next page, number 6, the
2 Plaintiffs were not the losing parties in the Rosemere
3 LPA litigation as per section 25 of the original CC&Rs,
4 period.

5 Then we go to number 6. The final judgment in
6 favor of the defendants is not against and is not an
7 obligation of the plaintiffs. It's right there. Right?

8 And this is -- to me, that appears to be pretty
9 clear as to what the order says.

10 And then we look at number 7. Right? The final
11 judgment against the Association is not an obligation or
12 debt owed by the plaintiffs. So that seems pretty clear
13 to me. So why would you attempt to collect a debt
14 owed -- allegedly owed by the plaintiffs when I have
15 ruled as a matter of law that, quote, the final judgment
16 against the Association is not an obligation or debt owed
17 by plaintiffs. I mean that's pretty clear to me.

18 And understand this: I can't change that right
19 now. It seems to me that when you read the entire order,
20 it's pretty clear as to what you can and cannot do.

21 MR. WAITE: So, Your Honor, hypothetically, if
22 the Association won a sweepstakes, and won the
23 sweepstakes and won a million dollars, did not come from
24 the homeowners, it came from some outside source, but it
25 went into -- that million dollars went into the

1 Association's bank account, the Lytle Trust judgment is
2 against the Association. I don't think anyone would
3 disagree that the Lytle Trust could execute on the
4 Association, its judgment debtor's bank account, to
5 attach, to garnish, to execute upon that million dollars
6 that came from the sweepstakes publisher. Because it
7 would be simply trying to collect its judgment against
8 its judgment debtor, the Association. And that is an
9 example, a hypothetical, that would not affect the
10 homeowners or their property. Although some would agree
11 that we could collect some ways indirectly even that
12 would affect the homeowners.

13 But that situation that I'm addressing, Your
14 Honor, the hypothetical homeowners --

15 THE COURT: Mr. Waite, you have to remember,
16 courts don't make decisions based upon hypotheticals.
17 Right? You know, a case has to be ripe for adjudication.
18 It has to be based upon the facts of this case.

19 And so maybe hypothetically if the Association
20 won the Lotto, you know, maybe that's viable. But I
21 don't think they have. And so at the end of the day,
22 this is what I ruled as a matter of law in this case, and
23 I don't know how it can be any clearer than this. Once
24 again, I'm going to provision 6 of the, quote,
25 conclusions of law: The final judgment is in favor --

1 no. The final judgment in favor of the defendants is not
2 against and is not an obligation of the plaintiffs.

3 And that's been sitting there for three years
4 now.

5 And then number 7, a final judgment against the
6 Association is not an obligation or debt owed by the
7 Plaintiffs. It seems pretty clear to me. Then you
8 couple that with, quote: It is hereby ordered -- hereby
9 further ordered, adjudged, and decreed that the
10 defendants are permanently enjoined from taking any
11 action in the future against the plaintiffs or their
12 properties based upon the Rosemere LPA Litigation.

13 I don't know how I could be any clearer than
14 that. Because remember, you can't read this in one line
15 of the order. You have to read the total order to
16 determine what its impact is because I made some
17 conclusion here as a matter of law, they can't take any
18 action.

19 In fact, it goes even further than that. It
20 says the final judgment in favor of defendants is not
21 against and is not an obligation of the plaintiffs. So
22 maybe hypothetically if they won the lottery, maybe they
23 could go against the Association. But they better not go
24 against the plaintiffs in any way. I don't mind saying
25 that.

1 And to be clear, permanently enjoined from
2 taking any action in the future against the plaintiffs or
3 their property.

4 I don't want to overlook counsel on behalf of
5 the opposing parties. Anything you want to add? Then
6 I'll give Mr. Waite the last word.

7 MR. SMITH: Your Honor, I have nothing further.

8 This is Wesley Smith for the plaintiffs. I
9 don't have anything further to add.

10 THE COURT: Miss Wang, I don't ever want to
11 overlook you, ma'am.

12 MS. WANG: Thank you, Your Honor.

13 I just want to simply respond quickly, that
14 based upon the issues that are before the Court and the
15 procedural posture of the case, the Court is not in a
16 position to make global sort of rulings or determinations
17 with respect to what the parties' rights are against
18 their Association. What the parties can and cannot do
19 with respect to the Association is ultimately governed by
20 the CC&Rs that pertain to the Association. And the CC&Rs
21 themselves state what the nature of the Association is,
22 what it can and cannot do, what the parties can and
23 cannot do with respect to their relationship with the
24 Association, as well as respective homeowners.

25 So I don't think that the Court is in a position

1 to define those rights for the homeowners with respect to
2 every given hypothetical. But rather, the parties must
3 look to the CC&Rs to figure out what they can and cannot
4 do.

5 Ultimately with respect to the issues that were
6 before the Court, the Court had to interpret the original
7 CC&Rs as they pertained to the particular set of
8 circumstances that were in front of the Court. And based
9 upon its interpretation of the CC&Rs, which was affirmed
10 by the Nevada Supreme Court on multiple occasions, the
11 Court determined that simply with respect to these
12 particular judgments, that they cannot be collected
13 against the homeowners.

14 So ultimately no matter what happens down the
15 road or what kind of situation may arise, what the
16 parties or what the Association can do, that's governed
17 by the CC&Rs. And to the extent that the Lytle Trust has
18 an issue with understanding their rights under the CC&Rs,
19 whether they can bring a receiver action or what their
20 judgment creditor rights are, again, ultimately I submit
21 that that's governed by the CC&Rs. Because the Court
22 cannot contemplate every single possible situation that
23 might arise.

24 That's all I have to add, Your Honor. Thank
25 you.

1 THE COURT: Okay. Mr. Waite, you get the last
2 word, sir, of course.

3 MR. WAITE: Thank you, Your Honor. Appreciate
4 it.

5 Your Honor, maybe I should just address what
6 Miss Wang just said. We're asking for guidance regarding
7 the CC&Rs. There is a tension that exists between the
8 judgment, the three judgments issued by three other
9 courts, that give rise to judgment creditor rights in the
10 Lytle Trust, and that tension then exists vis-a-vis the
11 permanent injunction that imposes obligations by --
12 through the permanent injunction upon the Lytle Trust.

13 So I would just simply ask for purposes of
14 someone is going to prepare an order, would you
15 articulate whether you are granting the motion for
16 clarification and have clarified it in such and such
17 ways, or you are denying the motion for clarification and
18 are not providing clarification because the prior orders
19 are clear? I would just ask, because someone is going to
20 have to prepare an order here.

21 Lastly, Your Honor, as a totally unrelated
22 issue, Your Honor may be aware that -- we are not hiding
23 the ball or anything -- but we did very recently file a
24 notice of appeal from this Court's contempt order. We
25 would ask to be able to file a cash supersedeas bond.

1 Is there any objection from -- we have done that
2 in the past, and we would propose filing a cash
3 supersedeas bond to obtain a stay while the appeal goes
4 on over.

5 THE COURT: Any comment from the plaintiffs on
6 that issue?

7 MR. SMITH: This is Wesley Smith, plaintiffs'
8 counsel.

9 I think in general they have posted a cash bond
10 in the past. We don't necessarily have an objection to
11 that. I think that Mr. Waite can file a motion on that
12 setting forth the amount of the bond that they are
13 proposing so that we can properly respond to that?

14 THE COURT: And you know what? And I don't want
15 to overlook Miss Wang, but one of the things I have
16 always done historically, I like written motions,
17 calendars, and you know, things set on calendar, and so I
18 can hear and decide based upon the merits. Unless
19 everyone agrees, that's how historically I have handled
20 all issues.

21 And this is important, too, I don't mind saying
22 this: I mean, I expect many times when I make decisions,
23 that there will be appeals. And I've never -- that's
24 never really concerned me. That's what good lawyers do.
25 I've ran a few appeals up from time to time. And I

1 always think about one of the first appeals I ever worked
2 on. That was Gentile versus State Bar of Nevada. And
3 that case ultimately ended up before the United States
4 Supreme Court.

5 MR. WAITE: Yes, it did.

6 THE COURT: And I did briefing on that case.
7 And I don't know if many lawyers can say this, but at the
8 end of the day, the United States Supreme Court agreed
9 with me and not the Supreme Court of the State of Nevada
10 as far as First Amendment issues were concerned.

11 And so my point is, that happens. I have had
12 appeals go up, I have lost. I have had them go up and
13 I've won and I've made case law. It is what it is.
14 That's never a problem. And that's why I always try to
15 make sure everyone has a full and fair opportunity to set
16 forth their respective positions on the record.

17 Because I don't mind sharing this with you, I
18 know this for a fact: When it comes to these records and
19 discussions that we have on the record and when they are
20 transcribed like this, it's extremely valuable to our
21 Nevada Supreme Court. Because I've been in chambers with
22 a justice or two from time to time, and I won't mention
23 their names. But they will have the entire record. They
24 read these transcripts. They do.

25 And that's why from time to time, I wonder why

1 lawyers don't get transcripts. Because to be candid with
2 you, I want my discussions on the record, so just in case
3 Justice Pickering wants to read it and know what I was
4 thinking. Because they read them. They do.

5 And so anyway, Mr. Waite, as far as that's
6 concerned, as far as the appeal, the writ, you can file
7 whatever you need as far as the bond is concerned. We'll
8 deal with that on the merits.

9 As far as today's motion for reconsideration is
10 concerned, what I'm going to do is this: I'm going to
11 deny the motion. And the reason for it is I've had a
12 chance to review the letter -- I'm sorry, the findings of
13 facts, conclusions of law, and order granting plaintiff's
14 motion for partial summary judgment. Also included in
15 here would be the permanent injunction and the like. And
16 to me, it appears pretty clear when you read the entire
17 order as its thrust, scope, and impact is concerned.

18 And just as important, too, I kind of -- and
19 understand this: I've already interpreted the rights
20 vis-a-vis the CC&Rs. I've made decisions in that regard.
21 And that was the purpose of the review. So I don't need
22 to interpret the CC&Rs as far as this case is concerned.
23 I've done that. The Supreme Court agreed with me. When
24 I made the determination that this was not a, quote,
25 Chapter 116 or whatever it is, wherever it's at, this was

1 a limited purpose association, not a traditional
2 homeowners association. So I've done that. And I just
3 feel my order is clear. And so I'm going to deny it.

4 As far as preparing the order, maybe -- who
5 wants -- Mr. Smith, you can, or Miss Wang, one of you can
6 prepare an order. Maybe you want to get a copy of the
7 transcript, the points I pointed out in the record. I
8 have no problem with that being placed in the order as
9 relates to the specific provisions of my order dating
10 back to April 26 of 2017. And make sure you circulate
11 it, and have Mr. Waite look it. He doesn't have to sign
12 off. If he has a problem with it, he can submit a
13 competing order. I have no problem with that.

14 So anyway, that'll be my decision. And with
15 that in mind, everyone enjoy your day.

16 MR. WAITE: Thank you.

17 MR. SMITH: Thank you, Your Honor.

18 MS. WANG: Thank you, Your Honor. Have a
19 wonderful 4th of July weekend.

20 THE COURT: All right. Everyone enjoy your day.
21 Stay safe out there.

22 (Hearing concluded at 10:02 a.m.)

23

24

* * * * *

25

1 I hereby certify that the foregoing proceedings
2 were taken at the time and place herein named; that the
3 transcript is a true record of the proceedings as
4 reported by me, a duly certified shorthand reporter and
5 disinterested person, and was thereafter transcribed into
6 typewriting by computer.

7 I further certify that I am not interested in
8 the outcome of said action, nor connected with, nor
9 related to any of the parties in said action, nor to
10 their respective counsel.

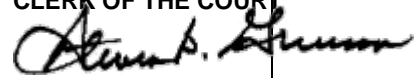
11 In witness whereof, I have hereunto set my hand
12 this 9th day of July, 2020.

13 *Michael A. Bouley*
14 _____

15 Michael A. Bouley, RDR
16 Nevada CCR #960
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NEOJ
CHRISTENSEN JAMES & MARTIN
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*Attorneys for September Trust, Zobrist Trust, Sandoval Trust
and Dennis & Julie Gegen*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

**NOTICE OF ENTRY OF ORDER
DENYING DEFENDANT LYTLE
TRUST'S MOTION FOR
CLARIFICATION AND EX PARTE
REQUEST FOR ORDER
SHORTENING TIME**

Date: July 2, 2020
Time: 9:00 a.m.

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

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

CONSOLIDATED

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

5 Plaintiffs,

6 vs.

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

11 Defendants.

12 PLEASE TAKE NOTICE that on July 15, 2020, an Order Denying Defendant Lytle
13 Trust's Motion for Clarification and Ex Parte Request for Order Shortening Time was filed with
14 the Court, a copy of which is attached hereto.

15 DATED this 15th day of July, 2020.

16 **CHRISTENSEN JAMES & MARTIN**

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

18 Wesley J. Smith, Esq.

19 Nevada Bar No. 11871

20 Laura J. Wolff, Esq.

21 Nevada Bar No. 6869

22 7440 W. Sahara Ave.

23 Las Vegas, NV 89117

24 *Attorneys for Plaintiffs September Trust,*

25 *Zobrist Trust, Sandoval Trust, and*

26 *Dennis & Julie Gegen*

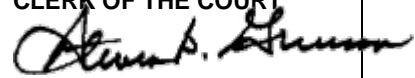
CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin. On July 15, 2020, I caused a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER DENYING DEFENDANT LYTTLE TRUST'S MOTION FOR CLARIFICATION AND EX PARTE REQUEST FOR ORDER SHORTENING TIME, to be served in the following manner:

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

Liz Gould (liz@foleyoakes.com)
Daniel Foley (Dan@foleyoakes.com)
Joel Henriod (JHenriod@LRRC.com)
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/s/ Natalie Saville
Natalie Saville



1 **ORDR**

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Attorneys for September Trust, Zobrist Trust, Sandoval Trust

and Dennis & Julie Gegen

9 **EIGHTH JUDICIAL DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

17 Plaintiffs,

18 vs.

19 TRUDI LEE LYTLE, JOHN ALLEN
20 LYTLE, THE LYTLE TRUST, DOES I
21 through X, and ROE CORPORATIONS I
22 through X,

23 Defendants.

Case No.: A-16-747800-C

Dept. No.: XVI

**ORDER DENYING DEFENDANT
LYTLE TRUST'S MOTION FOR
CLARIFICATION AND EX PARTE
REQUEST FOR ORDER
SHORTENING TIME**

Date: July 2, 2020

Time: 9:00 a.m.

24 SEPTEMBER TRUST, DATED MARCH 23,
25 1972; GERRY R. ZOBRIST AND JOLIN G.
26 ZOBRIST, AS TRUSTEES OF THE GERRY
27 R. ZOBRIST AND JOLIN G. ZOBRIST
28 FAMILY TRUST; RAYNALDO G.
SANDOVAL AND JULIE MARIE
SANDOVAL GEGEN, AS TRUSTEES OF
THE RAYNALDO G. AND EVELYN A.
SANDOVAL JOINT LIVING AND

Case No.: A-17-765372-C

Dept. No.: XVI

CONSOLIDATED

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

5 Plaintiffs,

6 vs.

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

11 Defendants.

12 Presently before the Court is Defendant Lytle Trust's Motion for Clarification and Ex Parte
13 Request for Order Shortening Time ("Motion for Clarification") and the Opposition filed by the
14 Plaintiffs, and the Reply, which came on for hearing on July 2, 2020 at 9:00 a.m. in Department XVI of
15 the Eighth Judicial District Court, Clark County, Nevada.

16 Wesley J. Smith, Esq. of Christensen James & Martin, Chtd. appeared on behalf of September
17 Trust, dated March 23, 1972, Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist
18 and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees
19 of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust dated May 27, 1992, and
20 Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint Tenants (collectively the "Plaintiffs").
21 Christina H. Wang, Esq. of Fidelity National Law Group appeared on behalf of Robert Z. Disman and
22 Yvonne A. Disman (the "Dismans"). Dan R. Waite, Esq. of Lewis Roca Rothgerber Christie LLP
23 appeared on behalf of Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust ("Lytle
24 Trust").

25 The Court having considered the Motion, Opposition, and Reply, having heard the arguments of
26 counsel, and with good cause appearing therefore, the Court hereby denies the Motion and enters the
27 following Findings of Fact, Conclusions of Law, and Order:

28 ///

///

///

FINDINGS OF FACT

1
2 1. On May 24, 2018, this Court entered its Order Granting Motion for Summary Judgment
3 or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary
4 Judgment (“May 2018 Order”) in favor of the September Trust, Zobrist Trust, Sandoval Trust, and
5 Gogens and against the Lytle Trust. The May 2018 Order is hereby incorporated by reference.

6 2. On October 24, 2019, the Lytle Trust filed its Renewed Application for Appointment of
7 Receiver in *Trudi Lee Lytle and John Allen Lytle, as trustees of the Lytle Trust v. Rosemere Estates*
8 *Property Owners’ Association*, Case No. A-18-775843-C, Eighth Judicial District Court, Clark County,
9 Nevada, which case was assigned to Judge J. Kishner (the “Receivership Action”).

10 3. On December 18, 2019, Judge Kishner entered her Order Appointing a Receiver of
11 Defendant Rosemere Property Owners Association (the “Order Appointing Receiver”). Among other
12 rights, powers, and duties, the Order Appointing Receiver instructed the receiver to “[i]ssue and collect a
13 special assessment upon all owners within the Association to satisfy the Lytle Trust’s judgments against
14 the Association.” (Order Appointing Receiver at 2:19-20).

15 4. On March 4, 2020, Plaintiffs filed a Motion for Order to Show Cause Why the Lytle
16 Trust Should Not Be Held in Contempt for Violation of Court Orders (“Contempt Motion”), which
17 alleged the Lytle Trust violated the May 2018 Order by seeking the appointment of a receiver over the
18 Rosemere Estates Property Owners’ Association (the “Association”) in the Receivership Action for the
19 purpose of collecting its Judgments through special assessments on the Plaintiffs and other property
20 owners. The Lytle Trust opposed the Contempt Motion.

21 5. The Contempt Motion came on for hearing on April 22, 2020.

22 6. During the hearing held on April 22, 2020, with regard to the scope of the May 2018
23 Order, the following exchange occurred:

24 MR WAITE: And I’ll ask it again, and I’ll ask it maybe not as a rhetorical question.

25 Pending the answer, quite honestly, I may have nothing else to say. I may have
26 nothing that I know of to say. But *did you intend by your Permanent Injunction*

1 *here to strip the Lytle Trust of all of its judgment creditor rights against the*
 2 *judgment debtor association?*

3 THE COURT: Well, the association wasn't a party, but the bottom line is this: **I**
 4 **stripped the Lytle Trust of their ability and right to enforce those judgments vis-**
 5 **a-vis the homeowners in this case.**

6 April 22, 2020 Transcript at 38:25-39:12 (emphasis added).

7 7. At the end of the hearing, the Court entered an oral ruling granting the Contempt Motion.

8 8. On May 18, 2020, the Plaintiffs submitted a proposed order with explanation of the
 9 wording that the Parties could not agree on.

10 9. On May 19, 2020, the Lytle Trust submitted a competing proposed order and filed the
 11 Motion for Clarification seeking to clarify, *inter alia*, what judgment creditor rights the Lytle Trust
 12 could or could not exercise without violating the May 2018 Order.

13 10. On May 22, 2020, this Court entered its Findings of Fact, Conclusions of Law, and Order
 14 Granting Plaintiffs' Motion for Order to Show Cause Why the Lytle Trust Should Not Be Held in
 15 Contempt for Violation of Court Orders ("Contempt Order") against the Lytle Trust. The May 2020
 16 Order is hereby incorporated by reference.

17 11. The Contempt Order entered on May 22, 2020 was the Order proposed by the Plaintiffs.

18 12. The Contempt Order, with regard to the May 2018 Order, stated the following
 19 Conclusions of Law:

20 10. The May 2018 Order's permanent injunction clearly precluded the Lytle
 21 Trust from doing anything as it relates to enforcing and recording the Rosemere
 22 Judgments ***against the Plaintiffs and Dismans or their properties.***

23 11. Indeed, the Lytle Trust has no judgment creditor rights to try to collect the
 24 Rosemere Judgments ***from the Plaintiffs or Dismans*** in any way, shape, or form.

25 Contempt Order at 10:23-28 (emphasis added).

26 13. The Defendant's proposed order did not have the language emphasized above and this
 27 difference between the competing orders was highlighted by the parties in their proposals.
 28

14. All of the Court's decisions in this case, including the May 2018 Order and the Contempt Order, are based upon the history of this case, and more specifically, the Findings of Fact, Conclusions of Law, and Order Granting the Boulden Trust and Lamothe Trust's Motion for Partial Summary Judgment entered by the Court on April 26, 2017 ("April 2017 Order") against the Lytle Trust.¹ The April 2017 Order is hereby incorporated by reference.

15. The April 2017 Order has been the ruling of this Court for over three years, was subject to review by the Nevada Supreme Court, and withstood appellate scrutiny.

16. The May 2018 Order referenced the April 2017 Order and borrowed its Findings of Fact and Conclusions of Law.

17. The April 2017 Order states clearly what actions can and cannot be taken by the Lytle Trust, as follows:

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

19. April 2017 Order, 7:1-3; July 2017 Order 7:1-3.

20. The April 2017 Order also contains the following:

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

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

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

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

¹ As noted in the Contempt Order at 3:8-14 and n.1, the April 2017 Order was modified on July 27, 2017 by removing any order on the slander of title claim, which is not at issue in the present Motion and did not impact the language of the April 2017 Order quoted herein.

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

April 2017 Order at 4:23-5:7; July 2017 Order at 4:14-23.

CONCLUSIONS OF LAW

1. The Court made its intentions clear at the April 22, 2020 hearing when it stated “I stripped the Lytle Trust of their ability and right to enforce those judgments vis-a-vis the homeowners in this case.” April 22, 2020 Transcript at 38:25-39:12.

2. Any doubt as to the Court’s intent regarding the May 2018 Order was resolved by entry of the written May 2020 Order after consideration of the competing orders submitted by the Plaintiffs and Defendant, specifically when the Court entered the following Conclusions of Law:

10. The May 2018 Order’s permanent injunction clearly precluded the Lytle Trust from doing anything as it relates to enforcing and recording the Rosemere Judgments ***against the Plaintiffs and Dismans or their properties.***

11. Indeed, the Lytle Trust has no judgment creditor rights to try to collect the Rosemere Judgments ***from the Plaintiffs or Dismans*** in any way, shape, or form. Contempt Order at 10:23-28 (emphasis added).

3. The Court conclusively answered the Lytle Trust’s question by entering the Order prepared by the Plaintiffs that included the emphasized language.

4. The Court did not hold the Lytle Trust in contempt for violating the April 2017 Order and does not expand its Contempt Order to include the April 2017 Order by entering this Order.

5. The thrust and focus of all the Court’s decisions in this matter are based upon the history of this case, including the April 2017 Order entered 3 years ago.

6. The April 2017 Order stating Defendants are permanently enjoined from taking “any action” in the future against the Plaintiffs or their properties based upon the Rosemere LPA Litigation was also clear.

7. The broad and the plain meaning of the term “any action” means any action, whether direct or indirect.

1 8. The April 2017 Order must be looked at in its entirety to determine its thrust, scope and
2 impact with respect to what kind of action can be taken by the Lytle Trust with regard to collecting on
3 its Judgments against the Association.

4 9. The April 2017 Order made clear that the Rosemere Judgments are not against the
5 Plaintiffs or an obligation or debt owed by the Plaintiffs.

6 10. The April 2017 Order also made clear that the Lytle Trust cannot take any action against
7 the Plaintiffs to attempt to collect its Judgments against the Association.

8 11. The May 2018 Order contains nearly identical Findings of Fact, Conclusions of Law, and
9 Orders.

10 12. Therefore, any action by the Lytle Trust to collect its Judgments against the Association
11 that results in payment of the Judgments by the Plaintiffs is a violation of the May 2018 Order.

12 13. This Court cannot make decisions based upon hypothetical situations presented by the
13 Lytle Trust. A case has to be ripe for adjudication and any decision based upon the facts of this case.

14 14. Because the language of the Orders discussed herein is clear, there is no clarification
15 needed or that the Court can provide.

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ORDER

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

IT IS HEREBY ORDERED ADJUDGED AND DECREED that Defendant's Lytle Trust Motion for Clarification and Ex Parte Request for Order Shortening Time is DENIED.

IT IS SO ORDERED.

Dated this 15th day of July, 2020.


DISTRICT COURT JUDGE
CG

Submitted by:

CHRISTENSEN JAMES & MARTIN

/s/ Wesley J. Smith

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Laura J. Wolff, Esq.

Nevada Bar No. 6869

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Las Vegas, NV 89117

Attorneys for Plaintiffs September Trust,

Zobrist Trust, Sandoval Trust, and

Dennis & Julie Gegen

**Approved as to Form and Content —
Reserving All Appeal Rights – by:**

**LEWIS ROCA ROTHBERGER CHRISTIE
LLP**

/s/ Dan R. Waite

DAN R. WAITE, ESQ.

Nevada Bar 4078

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Las Vegas, Nevada 89169

Attorneys for Lytle Trust

RE: Dept 16 - A-16-747800-C - Boulden v. Lytle - Proposed Order Denying Motion for Clarification

Waite, Dan R. <DWaite@lrrc.com>

Tue 7/14/2020 9:15 AM

To: Wesley Smith <wes@cjmlv.com>

Thank you, Wes. You have my authorization to include my /s/ electronic signature and to submit the Order to the Court. All the best,

Dan

Dan R. Waite

Partner

702.474.2638 office

702.949.8398 fax

dwaite@lrrc.com

Lewis Roca
ROTHGERBER CHRISTIE

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lrrc.com

From: Wesley Smith <wes@cjmlv.com>

Sent: Tuesday, July 14, 2020 9:10 AM

To: Waite, Dan R. <DWaite@lrrc.com>

Subject: Dept 16 - A-16-747800-C - Boulden v. Lytle - Proposed Order Denying Motion for Clarification

[EXTERNAL]

Dan,

Attached please find the final version of the Proposed Order Denying Motion for Clarification in the above referenced matter. Please review and if it meets your approval, please respond confirming that I have your permission to affix your /s/ electronic signature and submit the Order to the Court.

Thanks,

Wes Smith

Christensen James & Martin

7440 W. Sahara Ave.

Las Vegas, NV 89117

Tel. (702) 255-1718

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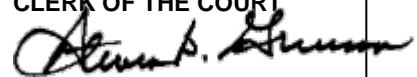
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16 *John Allen Lytle, as Trustees of the Lytle Trust*

17 DISTRICT COURT
18 CLARK COUNTY, NEVADA

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

24 Plaintiffs,

25 v.

26 TRUDI LEE LYTLE; and JOHN ALLEN
27 LYTLE, as trustees of the Lytle Trust,
28 DOES I through X, inclusive, and ROE
CORPORATIONS I through X,

Defendants.

SEPTEMBER TRUST, DATED MARCH 23,
1972; GERRY R. ZOBRIST and JOLIN G.
ZOBRIST, as Trustees of the Gerry R.
Zobrist and Jolin G. Zobrist Family
Trust; RAYNALDO G. SANDOVAL and
JULIE MARIE SANDOVAL GEGEN, As
Trustees of the Raynaldo G. and
Evelyn A. Sandoval Joint Living and
Devolution Trust Dated May 27, 1992;
and DENNIS A. GEGEN and JULIE S.
GEGEN, husband and wife, as joint
tenants,

Plaintiffs,

v.

TRUDI LEE LYTLE; and JOHN ALLEN

Case No. A-16-747800-C

Dep't No. 16

AMENDED NOTICE OF APPEAL

Consolidated with:

Case No. A-17-765372-C

Dep't No. 16

LYTLE, as trustees of the Lytle Trust,
JOHN DOES I through V, inclusive, and
ROE ENTITIES I through V, inclusive,
Defendants.

Please take notice that defendants Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust hereby appeal to the Supreme Court of Nevada from:

1. “Order Granting Plaintiffs’ Motion for Order to Show Cause Why the Lytle Trust Should Not be Held in Contempt for Violation of Court Orders,” filed May 22, 2020, notice of entry of which was served electronically on May 22, 2020 (Exhibit A);
2. “Order Denying Defendant Lytle Trust’s Motion for Clarification and Ex Parte Request for Order Shortening Time,” filed July 15, 2020, notice of entry of which was served electronically on July 15, 2020 (Exhibit B); and
3. All judgments, rulings and interlocutory orders made appealable by the foregoing.

Dated this 31st day of July, 2020.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/Joel D. Henriod

JOEL D. HENRIOD (SBN 8492)
DANIEL F. POLSENBERG (SBN 2376)
DAN R. WAITE (SBN 4078)
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*Attorneys for Defendants Trudi Lee Lytle and
John Allen Lytle, as Trustees of the Lytle
Trust*

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of July, 2020, I served the foregoing
“Amended Notice of Appeal” on counsel by the Court’s electronic filing system
to the persons and addresses listed below:

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Yvonne A. Disman*

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

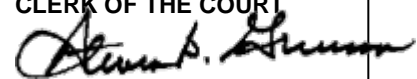
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trustees of the Jacques & Linda Lamothe
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/s/ Lisa M. Noltie
An Employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP

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15 *Attorneys for Defendants Trudi Lee Lytle and*
16 *John Allen Lytle, as Trustees of the Lytle Trust*

17
18 DISTRICT COURT
19 CLARK COUNTY, NEVADA

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

25 Plaintiffs,

26 v.

27 TRUDI LEE LYTLE; and JOHN ALLEN
28 LYTLE, as trustees of the Lytle Trust,
DOES I through X, inclusive, and ROE
CORPORATIONS I through X,

Defendants.

Case No. A-16-747800-C

Dep't No. 16

AMENDED CASE
APPEAL STATEMENT

SEPTEMBER TRUST, DATED MARCH 23,
1972; GERRY R. ZOBRIST and JOLIN G.
ZOBRIST, as Trustees of the Gerry R.
Zobrist and Jolin G. Zobrist Family
Trust; RAYNALDO G. SANDOVAL and
JULIE MARIE SANDOVAL GEGEN, As
Trustees of the Raynaldo G. and
Evelyn A. Sandoval Joint Living and
Devolution Trust Dated May 27, 1992;
and DENNIS A. GEGEN and JULIE S.
GEGEN, husband and wife, as joint
tenants,

Plaintiffs,

Consolidated with:

Case No. A-17-765372-C

Dep't No. 16

v.

TRUDI LEE LYTLE; and JOHN ALLEN
LYTLE, as trustees of the Lytle Trust,
JOHN DOES I through V, inclusive, and
ROE ENTITIES I through V, inclusive,

Defendants.

1. Name of appellants filing this case appeal statement:

Defendants Trudi Lee Lytle and John Allen Lytle, as trustees
of the Lytle Trust

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable Timothy C. Williams

3. Identify each appellant and the name and address of counsel for each
appellant:

*Attorneys for Appellants Trudi Lee Lytle and
John Allen Lytle, as Trustees of the Lytle Trust*

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

4. Identify each respondent and the name and address of appellate counsel,
if known, for each respondent (if the name of a respondent's appellate
counsel is unknown, indicate as much and provide the name and address
of that respondent's trial counsel):¹

*Attorneys for Respondents September Trust, dated March 23, 1972,
Gerry R. Zobrist and Jolin G. Zobrist, as trustees of the Gerry R.
Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval
and Julie Marie Sandoval Gegen, as trustees of the Raynaldo G. and
Evelyn A. Sandoval Joint Living and Devolution Trust dated May*

¹ Plaintiffs Marjorie B. Boulden, trustee of the Marjorie B. Boulden Trust, and
Linda Lamothe and Jacques Lamothe, trustees of the Jacques & Linda
Lamothe Living Trust would be listed as respondents, but they filed a
"Withdrawal of Joinder on Plaintiffs September Trust, et al.'s Motion for an
Order to Show Cause Why the Lytle Trust Should Not be Held in Contempt for
Violation of Court Orders" on May 14, 2020 as a result of a settlement
agreement reached with the Lytle Trust. (Ex. A.)

27, 1992, and Dennis A. Gegen and Julie S. Gegen, husband and wife, as joint tenants

KEVIN B. CHRISTENSEN
WESLEY J. SMITH
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Attorneys for Respondents Robert Z. Disman and Yvonne A. Disman

CHRISTINA H. WANG
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(702) 667-3000

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Retained counsel

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained counsel

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

N/A

9. Indicate the date the proceedings commenced in the district court, e.g., date complaint, indictment, information, or petition was filed:

"Complaint," filed December 8, 2016 in case no. A-16-7476800-C.

"Complaint," filed November 30, 2017 in case no. A-17-765372-C.

Case no. A-17-765372-C was consolidated with case no. A-16-7476800-C on February 28, 2018.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

In other lawsuits, the defendant Lytle Trust obtained three judgments (totaling approx. \$1.8 million) against the Rosemere Estate Property Owners Association ("Association"). The Lytle Trust is a member of the Association. This action stems from a dispute over the validity and legal effect of abstracts of judgments the Lytle Trust recorded against certain residential property owned by other Association members. The district court (Judge T. Williams) granted summary judgment in favor of plaintiffs and entered a permanent injunction against the Lytle Trust precluding action to enforce their judgments directly against the other Association members (the "May 2018 order"). The Dismans were added as parties to the litigation when they purchased the Boulden property.

Separately, the Lytle Trust later filed an action in the district court (assigned to Judge J. Kishner) for the appointment of a receiver over the judgment debtor Association ("Receiver Action"). Judge Kishner appointed a Receiver over the Association and empowered the Receiver to, *inter alia*, take action to satisfy its judgment liability to the Lytle Trust. The other Association homeowners, who were not parties to the Receiver Action, filed a motion in the underlying action with Judge Williams seeking to hold the Lytle Trust in contempt for violating the permanent injunction by seeking the appointment of a Receiver.

The Lytle Trust appealed from the post-judgment order holding it in contempt for purportedly violating the May 2018 order by seeking the appointment of a receiver, and awarding penalties and expenses to the September Trust, the Zobrist Trust, the Sandoval Trust, the Gegens, and the Dismans on June 22, 2020. The Lytle Trust now amends its notice of appeal to include the order denying its motion for clarification.

11. Indicate whether the case has previously been the subject of an appeal or an original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding.

Lytle v. Boulden, Case No. 73039

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

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

Lytle v. Disman, Case No. 79753

Lytle v. Boulden, Case No. 79776

12. Indicate whether this appeal involves child custody or visitation:

This case does not involve child custody or visitation.

1 13. If this is a civil case, indicate whether this appeal involves the possibility
2 of settlement:

3 Not applicable, as this appeal already has been removed from
4 the Court's settlement program.

5 Dated this 31st day of July, 2020.

6 LEWIS ROCA ROTHGERBER CHRISTIE LLP

7 By: /s/Joel D. Henriod

8 JOEL D. HENRIOD (SBN 8492)
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14 *Attorneys for Defendants Trudi Lee Lytle and*
15 *John Allen Lytle, as Trustees of the Lytle*
16 *Trust*

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of July, 2020, I served the foregoing “Case Appeal Statement” on counsel by the Court’s electronic filing system to the persons and addresses listed below:

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Marie Sandoval Gegen, as trustees
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1992, and Dennis A. Gegen and
Julie S. Gegen, husband and wife,
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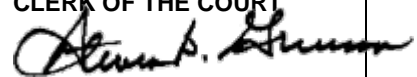
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Living Trust*

/s/ Lisa M. Noltie
An Employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP

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*Attorneys for Defendants Trudi Lee Lytle and
John Allen Lytle, as Trustees of the Lytle Trust*

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

TRUDI LEE LYTLE; and JOHN ALLEN
LYTLE, as trustees of the Lytle Trust,
DOES I through X, inclusive, and ROE
CORPORATIONS I through X,

Defendants.

Case No. A-16-747800-C

Dep't No. 16

**ERRATA TO
AMENDED NOTICE OF APPEAL**

SEPTEMBER TRUST, DATED MARCH 23,
1972; GERRY R. ZOBRIST and JOLIN G.
ZOBRIST, as Trustees of the Gerry R.
Zobrist and Jolin G. Zobrist Family
Trust; RAYNALDO G. SANDOVAL and
JULIE MARIE SANDOVAL GEGEN, As
Trustees of the Raynaldo G. and
Evelyn A. Sandoval Joint Living and
Devolution Trust Dated May 27, 1992;
and DENNIS A. GEGEN and JULIE S.
GEGEN, husband and wife, as joint
tenants,

Plaintiffs,

v.

TRUDI LEE LYTLE; and JOHN ALLEN

Consolidated with:

Case No. A-17-765372-C

Dep't No. 16

1 LYTLE, as trustees of the Lytle Trust,
2 JOHN DOES I through V, inclusive, and
3 ROE ENTITIES I through V, inclusive,

4 Defendants.

5 The exhibits to defendants' July 31, 2020, "Amended Notice of Appeal"
6 were inadvertently omitted. They are attached here.

7 Dated this 4th day of August, 2020.

8 LEWIS ROCA ROTHGERBER CHRISTIE LLP

9
10 By: /s/Joel D. Henriod

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17 *Attorneys for Defendants Trudi Lee Lytle and*
18 *John Allen Lytle, as Trustees of the Lytle*
19 *Trust*

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of August, 2020, I served the foregoing
“Errata to Amended Notice of Appeal” on counsel by the Court’s electronic
filing system to the persons and addresses listed below:

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Jolin G. Zobrist Family Trust,
Raynaldo G. Sandoval and Julie
Marie Sandoval Gegen, as trustees
of the Raynaldo G. and Evelyn A.
Sandoval Joint Living and
Devolution Trust dated May 27,
1992, and Dennis A. Gegen and
Julie S. Gegen, husband and wife,
as joint tenants*

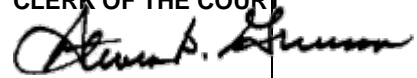
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Linda Lamothe and Jacques Lamothe,
trustees of the Jacques & Linda Lamothe
Living Trust*

/s/ Jessie M. Helm
An Employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP

EXHIBIT A

EXHIBIT A



NEOJ
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*Attorneys for September Trust, Zobrist Trust, Sandoval Trust,
and Dennis & Julie Gegen*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST, *et*
al.,

Plaintiffs,

vs.

TRUDI LEE LYTLE, *et al.*,

Defendants.

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

**NOTICE OF ENTRY OF ORDER
GRANTING PLAINTIFFS'
MOTION FOR ORDER TO SHOW
CAUSE WHY THE LYTLE TRUST
SHOULD NOT BE HELD IN
CONTEMPT FOR VIOLATION OF
COURT ORDERS**

SEPTEMBER TRUST, DATED MARCH 23,
1972, *et al.*,

Plaintiffs,

vs.

TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST, *et al.*,

Defendants.

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

CONSOLIDATED

NOTICE IS HEREBY GIVEN, that an Order Granting Plaintiffs' Motion for Order to
Show Cause Why the Lytle Trust Should Not Be Held in Contempt for Violation of Court Orders

1 was entered in the above-captioned matter on May 22, 2020. A copy of the Order is attached
2 hereto.

3 DATED this 22nd day of May 2020.

CHRISTENSEN JAMES & MARTIN

4
5 By: /s/ Wesley J. Smith
6 Wesley J. Smith, Esq.
7 Nevada Bar No. 11871
8 *Attorneys for September Trust, Zobrist*
9 *Trust, Sandoval Trust and Gegen*
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CHRISTENSEN JAMES & MARTIN
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 & FAX: (702) 255-0871

001576

CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin. On May 22, 2020, I caused a true and correct copy of the foregoing Notice of Entry of Order Granting Plaintiffs' Motion for Order to Show Cause Why the Lytle Trust Should Not Be Held in Contempt for Violation of Court Orders, to be served in the following manner:

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

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

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

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

/s/ Natalie Saville
 Natalie Saville

ORDR

CHRISTENSEN JAMES & MARTIN

KEVIN B. CHRISTENSEN, ESQ.

Nevada Bar No. 175

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Attorneys for September Trust, Zobrist Trust, Sandoval Trust

and Dennis & Julie Gegen

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-16-747800-C

Dept. No.: XVI

**ORDER GRANTING PLAINTIFFS'
MOTION FOR ORDER TO SHOW
CAUSE WHY THE LYTLE TRUST
SHOULD NOT BE HELD IN
CONTEMPT FOR VIOLATION OF
COURT ORDERS**

Date: April 22, 2020

Time: 9:00 a.m.

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

Case No.: A-17-765372-C

Dept. No.: XVI

CONSOLIDATED

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

5 Plaintiffs,

6 vs.

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

11 Defendants.

12 Presently before the Court is Plaintiffs' Motion for Order to Show Cause Why the Lytle Trust
13 Should Not Be Held in Contempt for Violation of Court Orders ("Motion") filed by the September Trust,
14 dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the
15 Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie
16 Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and
17 Devolution Trust dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen,
18 Husband and Wife, as Joint Tenants ("Dennis & Julie Gegen") (collectively the "Plaintiffs"), the Joinders
19 filed by Marjorie B. Boulden, Trustee of the Marjorie B. Boulden Trust, amended and restated dated July
20 17, 1996 ("Boulden Trust") and Linda Lamothe and Jacques Lamothe, Trustees of the Jacques and Linda
21 Lamothe Living Trust ("Lamothe Trust") and Robert Z. Disman and Yvonne A. Disman (the "Dismans"),
22 and the Opposition and Reply thereto, which came on for hearing on April 22, 2020 at 9:00 a.m. in
23 Department XVI of the Eighth Judicial District Court, Clark County, Nevada.

24 Wesley J. Smith, Esq. of Christensen James & Martin, Chtd. appeared on behalf of the Plaintiffs.
25 Daniel T. Foley, Esq. of Foley & Oakes, PC appeared on behalf of the Boulden Trust and Lamothe Trust.
26 Christina H. Wang, Esq. of Fidelity National Law Group appeared on behalf of the Dismans. Dan R.
27 Waite, Esq. of Lewis Roca Rothgerber Christie LLP and Richard Haskin, Esq. of Gibbs Giden Locher
28 Turner Senet & Wittbrodt LLP appeared on behalf of Trudi Lee Lytle and John Allen Lytle, as Trustees
of the Lytle Trust ("Lytle Trust"). Patricia Lee, Esq. of Hutchison & Steffen was present on behalf of
Kevin Singer, court appointed Receiver over the Rosemere Estates Property Owners Association

1 (“Association”), in Case No. A-18-775843-C, *Trudi Lee Lytle et al. v. Rosemere Estates Property*
 2 *Owners’ Association* (“Receivership Action”).

3 The Court having considered the Motion, Joinders, Opposition, and Reply, together with the
 4 Exhibits thereto, having heard the arguments of counsel, and with good cause appearing therefore, the
 5 Court hereby grants the Motion and Joinders and enters the following Findings of Fact, Conclusions of
 6 Law, and Order:

7 **FINDINGS OF FACT**

8 1. On April 26, 2017, this Court entered its Findings of Fact, Conclusions of Law, and Order
 9 Granting the Boulden Trust and Lamothe Trust’s Motion for Partial Summary Judgment (“April 2017
 10 Order”) against the Lytle Trust. On the Lytle Trust’s Motion for Reconsideration or, in the alternative,
 11 Motion to Alter or Amend Judgment, on July 27, 2017, this Court entered its Order Granting Motion to
 12 Alter or Amend Findings of Fact and Conclusions of Law (“July 2017 Order”) in favor of the Boulden
 13 Trust and the Lamothe Trust on their Motion for Partial Summary Judgment.¹ The July 2017 Order is
 14 hereby incorporated by reference.

15 2. In the July 2017 Order, the Court concluded, in part, that: the Association is a “limited
 16 purpose association” as referenced in NRS 116.1201(2); as a limited purpose association, NRS 116.3117
 17 is not applicable to the Association; as a result of the Rosemere Litigation I (referred to in the July 2017
 18 Order as the Rosemere LPA Litigation) between the Lytle Trust and the Association, the Amended
 19 CC&Rs at issue were judicially declared to have been improperly adopted and recorded, were invalid,
 20 have no force and effect, and were declared *void ab initio*; the Boulden Trust and Lamothe Trust were
 21 not parties to the Rosemere Litigation I; the Boulden Trust and Lamothe Trust were not “losing parties”
 22 in the Rosemere Litigation I per Section 25 of the Original CC&Rs; the Final Judgment in the Rosemere
 23 Litigation I against the Association in favor of the Lytle Trust is not against, and is not an obligation of,

26 ¹ The April 2017 Order included an order that the Lytle Trust had slandered title. The Court
 27 subsequently determined that it had not made findings of fact or conclusions of law on this issue and
 28 amended accordingly by entering the July 2017 Order without any order on the slander of title claim.
 The slander of title claim was later dismissed by stipulation between the parties. *See* Notice of Entry of
 Stipulation and Order to Dismiss All Remaining Claims Without Prejudice filed on January 14, 2019.

1 the Boulden Trust and Lamothe Trust; and the Final Judgment against the Association in the Rosemere
2 Litigation I is not an obligation or debt owed by the Boulden Trust and Lamothe Trust.

3 3. The July 2017 Order also included the following permanent injunction at page 7:

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

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

11 4. The Court ordered the Lytle Trust to expunge the Abstracts of Judgment that it had
12 recorded against properties owned by the Boulden Trust and Lamothe Trust. The Lytle Trust released
13 the Abstracts of Judgment, but immediately recorded two *lis pendens* against the Boulden Trust and
14 Lamothe Trust properties. Thereafter, the Lytle Trust refused to voluntarily expunge the *lis pendens* and
15 the Boulden Trust and Lamothe Trust were forced to file a Motion to Expunge *Lis Pendens*. This Court
16 summarily granted the Motion on June 23, 2017 and the *lis pendens* were ordered stricken, but the Lytle
17 Trust was not held in contempt.

18 5. The Lytle Trust appealed the July 2017 Order and the Nevada Supreme Court issued an
19 Order of Affirmance on December 4, 2018 in Case No. 73039, *Trudi Lee Lytle v. Marjorie B. Boulden*
20 (“First Order of Affirmance”).²

21 6. After entry of the July 2017 Order, the September Trust, Zobrist Trust, Sandoval Trust,
22 and Gegens, which also own property within the Rosemere Subdivision, approached the Lytle Trust and
23 requested that it release the Abstracts of Judgment recorded against their properties as well. After the
24 Lytle Trust refused to release the Abstracts of Judgment as to their properties, the September Trust,
25 Zobrist Trust, Sandoval Trust, and Gegens filed a Complaint against the Lytle Trust in Case No. A-17-
26 765372-C, which was consolidated with this Case (Case No. A-16-747900-C) on February 21, 2018.

27 ² The Boulden Trust sold its property to the Dismans on August 4, 2017. This Court subsequently held,
28 in an Order entered on or about December 26, 2018, that the July 2017 Order likewise applied to the
Rosemere Litigation II Judgment, which the Lytle Trust sought to enforce against the Lamothe Trust
and the Dismans’ and their properties after entry of the July 2017 Order.

1 7. On May 24, 2018, this Court entered its Order Granting Motion for Summary Judgment
2 or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary
3 Judgment (“May 2018 Order”) in favor of the September Trust, Zobrist Trust, Sandoval Trust, and
4 Gegens and against the Lytle Trust. The May 2018 Order is hereby incorporated by reference.

5 8. In the May 2018 Order, the Court concluded, in part, that: the Association is a “limited
6 purpose association” as referenced in NRS 116.1201(2); as a limited purpose association, NRS 116.3117,
7 the statute upon which the Lytle Trust relied to record the Abstracts of Judgment, is not applicable to the
8 Association; as a result of the Rosemere Litigation I between the Lytle Trust and the Association, the
9 Amended CC&Rs at issue were judicially declared to have been improperly adopted and recorded, were
10 invalid, have no force and effect, and were declared *void ab initio*; the September Trust, Zobrist Trust,
11 Sandoval Trust, and Gegens were not parties to the Rosemere Litigation I, Rosemere Litigation II, or
12 Rosemere Litigation III; the September Trust, Zobrist Trust, Sandoval Trust, and Gegens were not
13 “losing parties” in the Rosemere Litigation I, Rosemere Litigation II, or Rosemere Litigation III per
14 Section 25 of the Original CC&Rs; the Judgments issued in the Rosemere Litigation I, Rosemere
15 Litigation II, or Rosemere Litigation III (collectively the “Rosemere Judgments”) against the Association
16 in favor of the Lytle Trust are not against, and are not an obligation of, the September Trust, Zobrist
17 Trust, Sandoval Trust, or Gegens to the Lytle Trust; and the Rosemere Judgments against the Association
18 are not an obligation or debt owed by the September Trust, Zobrist Trust, Sandoval Trust, or Gegens to
19 the Lytle Trust.

20 9. The May 2018 Order, at page 10, lines 10-19, contained the following permanent
21 injunction:

22 IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust
23 is permanently enjoined from recording and enforcing the Judgments obtained from the
24 Rosemere Litigation I, Rosemere Litigation II and Rosemere Litigation III, or any other
judgments obtained against the Association, against the September Property, Zobrist Property,
Sandoval Property or Gegen Property.

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

1 10. On June 19, 2018, the Lytle Trust appealed the May 2018 Order to the Nevada Supreme
2 Court, Case No. 76198, *Trudi Lee Lytle v. September Trust, Dated March 23, 1972*. This appeal was
3 consolidated with the Lytle Trust's subsequent appeal of an award of attorney's fees and costs in favor
4 of the September Trust, Zobrist Trust, Sandoval Trust, and Gegens under NRS 18.010(2)(b), Case No.
5 77007. The Supreme Court entered its Order of Affirmance affirming the May 2018 Order and
6 subsequent fees order on March 2, 2020 ("Second Order of Affirmance").

7 11. On June 8, 2018, the Lytle Trust filed a new action, Case No. A-18-775843-C, *Trudi Lee*
8 *Lytle et al. v. Rosemere Estates Property Owners' Association* ("Receivership Action"), asserting claims
9 against the Association for (a) Declaratory Judgment, and (b) Breach of Contract/Easement Agreement.
10 The prayer for relief in the Receivership Action sought:

11 a. an Order declaring that the Association must continue to operate as required by the
12 CC&Rs and Chapters 82 and 116 of the Nevada Revised Statutes, which includes, but is not limited
13 to: 1) maintaining the landscaping in the exterior wall planters; 2) maintaining the exterior
14 perimeter and frontage; 3) maintaining the entrance gate; 4) maintaining the private drive and
15 sewer system; 5) ensuring that homeowners are paying their assessments; 6) seeking collection
16 activity against any homeowners that have failed to pay their assessments; 7) paying known
17 creditors of the Association; 8) specially assessing the homeowners to ensure that enough proceeds
18 exist within the HOA funds to pay all known creditors assessing; and 9) any other activity required
19 under Nevada law.

20 b. specific performance requiring the Association to comply with the CC&Rs, as well
21 as other Nevada law, with respect to the Association's maintenance and day-to-day activities;

22 c. injunctive relief preventing the Association from violating the terms of the CC&RS,
23 as well as other Nevada law, moving forward;

24 d. appointment of a receiver to handle the maintenance obligations and day-to-day
25 activities, including the financial activities regarding assessments and creditors, until a duly
26 constituted board may be instituted and power transitioned thereto; and
27
28

e. reasonable attorneys' fees, costs of suit and litigation, and such other and further relief as the Court deems just and proper

12. The Complaint in the Receivership Action alleges that the Association is not functioning, that the common elements of the community are not being maintained, and that “the Association has not paid known creditors of the Association, which includes, but is not limited to, the annual dues to the Nevada Secretary of State or the Nevada Department of Real Estate or the Lytles, which hold multiple judgments against the Association.” Complaint at ¶ 21.

13. In a Renewed Application for Appointment of Receiver filed by the Lytle Trust on October 24, 2019 (“Application”) in the Receivership Action, the Lytle Trust asserts that one reason for a Receiver over the Association was due to the Association’s refusal to pay the Rosemere Judgments, including its refusal to assess Association members, including the Plaintiffs, so the Association could pay the Rosemere Judgments. Application at 3:2-4, 5:17-18 (“Additional grounds exist because the Association is refusing to pay and refusing to assess Association members related to various monetary judgments awarded to the Lytles against the Association”), 13:19-28 (“A receiver may be appointed...[a]fter judgment, to carry the judgment into effect” (quoting NRS 32.010(3))), 14:1-2, 16-28 (“the Lytle Trust obtained judgments against the Association and a Receiver is needed to carry those judgments into effect”), 15:20-25 (“the Association has a duty...to pay its debts, including the Judgments obtained by the Lytle Trust”), 16:17-22 (“the Association is without any governing body to assess the homeowners and pay the judgments”).

14. The Lytle Trust disclosed to the judge in the Receivership Action (the “Receivership Court”) that the Amended CC&Rs had been judicially declared *void ab initio* and of no force or effect. *Id.* at 8:11-12 (the District “Court determined that the Amended CC&Rs were not properly adopted or recorded, that the Amended CC&Rs are invalid, and that the Amended CC&Rs have no force or effect”); 8 at n.3 (“Note, Rosemere 2 Litigation commenced more than six years *before* the Court in Rosemere 1 Litigation ruled that the Amended CC&Rs were invalid.”) (emphasis in original); 9:13-17 (“In granting the Lytle Trust’s Motion for Attorneys’ Fees, the district court in the Rosemere 1 and Rosemere 2 Litigations . . . held that the Lytle Trust could recover attorneys’ fees under the Amended CC&Rs because

1 that document, while declared *void ab initio* by the district court, was in effect and enforced by the
2 Association against the Lytle Trust at all times during the underlying litigation.”).

3 15. However, The Lytle Trust further argued in the Application that the Amended CC&Rs
4 provide authority for a receiver to make special assessments on the Plaintiffs’ and other owners’
5 properties to collect funds to pay the Rosemere Judgments. *Id.* at 11:4-28, 13:1-17, 17:1-9. The Lytle
6 Trust’s Application included a section heading in its Statement of Fact section titled “The Amended
7 CC&Rs Grant the Association Authority to Assess Each Unit for Payment of Judgments Against the
8 Association.” *Id.* at 11:4-5. The Lytle Trust also represented that “the District Court already ruled that
9 the Association is liable for attorneys’ fees, costs and damages pursuant to the Amended CC&Rs, which
10 provide the Association with the ability to specially assess each property (unit) for the costs of the
11 judgments. Amended CC&Rs ¶ 10.11, Exhibit 16.” *Id.* at 17:6-9.

12 16. The Lytle Trust did not inform the Receivership Court about this Case, the July 2017 Order,
13 May 2018 Order, or the Orders of Affirmance.³ The Lytle Trust did not inform the Receivership Court
14 that this Court had issued permanent injunctions against the Lytle Trust relating to enforcement of the
15 Rosemere Judgments against the Plaintiffs, the Boulden Trust, the Lamothe Trust, the Dismans, or their
16 properties.

17 17. On December 18, 2019, based on the Lytle Trust’s Application, the Receivership Court
18 entered an Order Appointing a Receiver of Defendant Rosemere Property Owners Association (“Order
19 Appointing Receiver”). The Order Appointing Receiver, drafted by the Lytle Trust, directs the Receiver
20 to “[i]ssue and collect a special assessment upon all owners within the Association to satisfy the Lytle
21 Trust’s judgments against the Association.” Order Appointing Receiver at 2:19-20. It further empowers
22 the Receiver with “the authority to assess all Association unit owners to pay for any operation costs or
23 to pay for judgments against the Association. If an Association member does not pay an assessment then
24 the Receiver may proceed to foreclose on said member’s ownership interest in the property.” *Id.* at 6:4-
25 7.

27 ³ The Court notes that the Second Order of Affirmance was issued after entry of the Order Appointing
28 Receiver and the Lytle Trust could not have informed the Receivership Court of it prior to entry of the
Order Appointing Receiver.

18. On or around January 22, 2020, the Plaintiffs and the Dismans⁴ each received a letter from Kevin Singer of Receivership Specialists regarding the appointment of Mr. Singer as the Receiver in the Receivership Action (“Receiver Letter”). In the Receiver Letter, Mr. Singer states that “[t]he appointment of the receivership is predicated on judgments against the HOA in the approximate amount of \$1,481,822 by the Lytle family (“the Plaintiff”).... These judgments need to be paid and the Court agreed with the Plaintiff by appointing a Receiver to facilitate the satisfying of the judgments.... We would like to meet with title holding members of the HOA...[to] share three ideas we have to pay these judgments.”

19. On January 29, 2020, counsel for Plaintiffs sent a letter to the Receiver, with a copy to counsel for the Lytle Trust, notifying the Receiver that the Orders and Permanent Injunctions issued in this Case prevent further effort to collect the Rosemere Judgments from the Plaintiffs or other property owners. The Plaintiffs expressed their belief this effort to assess the property owners to pay the Rosemere Judgments violated this Court’s Orders and demanded that the Receiver cease and desist.

20. On March 4, 2020, the Plaintiffs filed the instant Motion informing the Court about the Lytle Trust’s actions and seeking sanctions for violation of this Court’s May 2018 Order. The Boulden Trust and Lamothe Trust filed a Joinder to the Motion on March 5, 2020.⁵ The Dismans filed a Joinder to the Motion on March 6, 2020.

21. The Association has never been a party to this Case.

CONCLUSIONS OF LAW

1. This case has a history, such as the filing of the *lis pendens* against the Boulden Trust and Lamothe Trust properties after the Court had ordered the expungement of the Abstracts of Judgment and continued enforcement of the Abstracts of Judgment against the September Trust, Zobrist Trust, Sandoval Trust, and Gegens’ properties after entry of the July 2017 Order, that demonstrates that the Lytle Trust does not respect this Court’s Orders.

⁴ At the time, the Boulden Trust and Lamothe Trust no longer held title to any property within the Rosemere Subdivision, having sold their properties on August 4, 2017, and May 1, 2019, respectively.

⁵ After the hearing on the Motion but prior to entry of this Order, the Boulden Trust and the Lamothe Trust withdrew their Joinders pursuant to a settlement with the Lytle Trust. Therefore, the Boulden Trust and Lamothe Trust are no longer considered movants for purposes of the relief granted herein.

2. This Court has inherent power to enforce its decrees, orders and judgments. A party is required to adhere to court orders, even disagreeable or erroneous orders, until terminated or overturned.

3. The proper course of action if a party disagrees with a Court order is to appeal.

4. The May 2018 Order must be obeyed by the Lytle Trust.

5. Each paragraph, each finding of fact, and each conclusion of law in the May 2018 Order must be given its plain meaning, and each paragraph of that Order's permanent injunction must be obeyed by the Lytle Trust.

6. As a result of the Findings of Fact and Conclusions of Law in the May 2018 Order, there were specific orders which are not mutually exclusive. Each issue ordered by the Court should be given its meaning, and they are not in conflict.

7. The Court's factual determinations and conclusions of law culminated with the permanent injunction language starting at Page 10, Line 10 of the May 2018 Order, which stated:

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

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

8. These paragraphs are not mutually exclusive and each must be obeyed by the Lytle Trust.

9. The Findings of Fact, Conclusions of Law, and Orders contained in the May 2018 Order, including the permanent injunctions, are clear, specific and unambiguous as to what the parties could and could not do in this case. Further, the terms of the permanent injunction are specific and definite so that the Lytle Trust could readily know exactly what duties or obligations were imposed on it.

10. The May 2018 Order's permanent injunction clearly precluded the Lytle Trust from doing anything as it relates to enforcing and recording the Rosemere Judgments against the Plaintiffs and Dismans or their properties.

11. Indeed, the Lytle Trust has no judgment creditor rights to try to collect the Rosemere Judgments from the Plaintiffs or Dismans in any way, shape, or form.

1 **IT IS HEREBY ORDERED ADJUDGED AND DECREED** that Plaintiffs' Motion for Order
2 to Show Cause Why the Lytle Trust Should Not Be Held in Contempt for Violation of Court Orders, as
3 well as the Joinders thereto filed by the Boulden Trust, the Lamothe Trust, and the Dismans, are
4 GRANTED.

5 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Lytle Trust
6 violated the May 2018 Order.

7 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Lytle Trust
8 is in contempt of the May 2018 Order.

9 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Lytle Trust
10 shall pay a \$500 penalty to each movant for violation of the May 2018 Order; specifically, \$500 payable
11 to the September Trust, \$500 payable to the Zobrist Trust, \$500 payable to the Sandoval Trust, \$500
12 payable to the Gegens, and \$500 payable to the Dismans.

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1 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the September
 2 Trust, Zobrist Trust, Sandoval Trust, Gegens, and Dismans, may file applications for their reasonable
 3 expenses, including, without limitation, attorney's fees, incurred by the party as a result of the contempt.
 4 The Court will consider such applications on the merits.

5 **IT IS SO ORDERED.**

6 Dated this 22 day of May, 2020.

7 
 8 DISTRICT COURT JUDGE CG

9 **Submitted by:**

10 **CHRISTENSEN JAMES & MARTIN**

11 /s/ Wesley J. Smith

12 Wesley J. Smith, Esq.
 13 Nevada Bar No. 11871
 14 Laura J. Wolff, Esq.
 15 Nevada Bar No. 6869
 16 7440 W. Sahara Ave.
 17 Las Vegas, NV 89117
 18 *Attorneys for Plaintiffs September Trust,*
 19 *Zobrist Trust, Sandoval Trust, and*
 20 *Dennis & Julie Gegen*

Approved as to Form and Content by:

FIDELITY NATIONAL LAW GROUP

/s/ Christina H. Wang

CHRISTINA H. WANG, ESQ.
 Nevada Bar No. 9713
 8363 W. Sunset Road, Suite 120
 Las Vegas, Nevada 89113
Attorneys for Robert & Yvonne Disman

16 **Reviewed by Not Approved by:**

17 **LEWIS ROCA ROTHBERGER CHRISTIE**
 18 **LLP**

19 Reviewed But Not Approved

20 DAN R. WAITE, ESQ.
 21 Nevada Bar 4078
 22 3993 Howard Hughes Parkway, Suite 600
 23 Las Vegas, Nevada 89169
 24 *Attorneys for Lytle Trust*

RE: Case No. A-16-747800-C - Boulden v. Lytle - ORDR - Proposed Order Granting Plaintiffs' Motion for Order to Show Cause

Wang, Christina <Christina.Wang@fnf.com>

Mon 5/18/2020 9:52 AM

To: Wesley Smith <wes@cjmlv.com>

Cc: Engelman, Lace <Lace.Engelman@fnf.com>

Approved – thanks.

Christina H. Wang

Litigation Counsel

Fidelity National Law Group

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PLEASE NOTE THAT OUR OFFICE HAS MOVED TO THE ABOVE ADDRESS.

The Law Division of Alamo Title Insurance, Chicago Title Insurance Co., Commonwealth Land Title Insurance Co., Fidelity National Title Insurance Co., and Fidelity National Title Group, Inc.

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From: Wesley Smith <wes@cjmlv.com>

Sent: Monday, May 18, 2020 9:45 AM

To: Wang, Christina <Christina.Wang@fnf.com>

Cc: Engelman, Lace <Lace.Engelman@fnf.com>

Subject: Re: Case No. A-16-747800-C - Boulden v. Lytle - ORDR - Proposed Order Granting Plaintiffs' Motion for Order to Show Cause

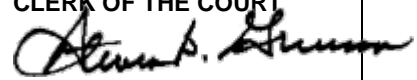
IMPORTANT NOTICE - This message sourced from an external mail server outside of the Company.

Christina,

Per our discussion, can you please approve this version which adds the date to footnote 2?

Wes Smith

Christensen James & Martin



ORDR
CHRISTENSEN JAMES & MARTIN
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Nevada Bar No. 175
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*Attorneys for September Trust, Zobrist Trust, Sandoval Trust
and Dennis & Julie Gegen*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

**ORDER GRANTING PLAINTIFFS'
MOTION FOR ORDER TO SHOW
CAUSE WHY THE LYTLE TRUST
SHOULD NOT BE HELD IN
CONTEMPT FOR VIOLATION OF
COURT ORDERS**

Date: April 22, 2020
Time: 9:00 a.m.

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

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

CONSOLIDATED

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

5 Plaintiffs,

6 vs.

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

11 Defendants.

12 Presently before the Court is Plaintiffs' Motion for Order to Show Cause Why the Lytle Trust
13 Should Not Be Held in Contempt for Violation of Court Orders ("Motion") filed by the September Trust,
14 dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the
15 Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie
16 Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and
17 Devolution Trust dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen,
18 Husband and Wife, as Joint Tenants ("Dennis & Julie Gegen") (collectively the "Plaintiffs"), the Joinders
19 filed by Marjorie B. Boulden, Trustee of the Marjorie B. Boulden Trust, amended and restated dated July
20 17, 1996 ("Boulden Trust") and Linda Lamothe and Jacques Lamothe, Trustees of the Jacques and Linda
21 Lamothe Living Trust ("Lamothe Trust") and Robert Z. Disman and Yvonne A. Disman (the "Dismans"),
22 and the Opposition and Reply thereto, which came on for hearing on April 22, 2020 at 9:00 a.m. in
23 Department XVI of the Eighth Judicial District Court, Clark County, Nevada.

24 Wesley J. Smith, Esq. of Christensen James & Martin, Chtd. appeared on behalf of the Plaintiffs.
25 Daniel T. Foley, Esq. of Foley & Oakes, PC appeared on behalf of the Boulden Trust and Lamothe Trust.
26 Christina H. Wang, Esq. of Fidelity National Law Group appeared on behalf of the Dismans. Dan R.
27 Waite, Esq. of Lewis Roca Rothgerber Christie LLP and Richard Haskin, Esq. of Gibbs Giden Locher
28 Turner Senet & Wittbrodt LLP appeared on behalf of Trudi Lee Lytle and John Allen Lytle, as Trustees
of the Lytle Trust ("Lytle Trust"). Patricia Lee, Esq. of Hutchison & Steffen was present on behalf of
Kevin Singer, court appointed Receiver over the Rosemere Estates Property Owners Association

1 (“Association”), in Case No. A-18-775843-C, *Trudi Lee Lytle et al. v. Rosemere Estates Property*
 2 *Owners’ Association* (“Receivership Action”).

3 The Court having considered the Motion, Joinders, Opposition, and Reply, together with the
 4 Exhibits thereto, having heard the arguments of counsel, and with good cause appearing therefore, the
 5 Court hereby grants the Motion and Joinders and enters the following Findings of Fact, Conclusions of
 6 Law, and Order:

7 **FINDINGS OF FACT**

8 1. On April 26, 2017, this Court entered its Findings of Fact, Conclusions of Law, and Order
 9 Granting the Boulden Trust and Lamothe Trust’s Motion for Partial Summary Judgment (“April 2017
 10 Order”) against the Lytle Trust. On the Lytle Trust’s Motion for Reconsideration or, in the alternative,
 11 Motion to Alter or Amend Judgment, on July 27, 2017, this Court entered its Order Granting Motion to
 12 Alter or Amend Findings of Fact and Conclusions of Law (“July 2017 Order”) in favor of the Boulden
 13 Trust and the Lamothe Trust on their Motion for Partial Summary Judgment.¹ The July 2017 Order is
 14 hereby incorporated by reference.

15 2. In the July 2017 Order, the Court concluded, in part, that: the Association is a “limited
 16 purpose association” as referenced in NRS 116.1201(2); as a limited purpose association, NRS 116.3117
 17 is not applicable to the Association; as a result of the Rosemere Litigation I (referred to in the July 2017
 18 Order as the Rosemere LPA Litigation) between the Lytle Trust and the Association, the Amended
 19 CC&Rs at issue were judicially declared to have been improperly adopted and recorded, were invalid,
 20 have no force and effect, and were declared *void ab initio*; the Boulden Trust and Lamothe Trust were
 21 not parties to the Rosemere Litigation I; the Boulden Trust and Lamothe Trust were not “losing parties”
 22 in the Rosemere Litigation I per Section 25 of the Original CC&Rs; the Final Judgment in the Rosemere
 23 Litigation I against the Association in favor of the Lytle Trust is not against, and is not an obligation of,
 24
 25

26 ¹ The April 2017 Order included an order that the Lytle Trust had slandered title. The Court
 27 subsequently determined that it had not made findings of fact or conclusions of law on this issue and
 28 amended accordingly by entering the July 2017 Order without any order on the slander of title claim.
 The slander of title claim was later dismissed by stipulation between the parties. *See* Notice of Entry of
 Stipulation and Order to Dismiss All Remaining Claims Without Prejudice filed on January 14, 2019.

1 the Boulden Trust and Lamothe Trust; and the Final Judgment against the Association in the Rosemere
 2 Litigation I is not an obligation or debt owed by the Boulden Trust and Lamothe Trust.

3 3. The July 2017 Order also included the following permanent injunction at page 7:

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

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

11 4. The Court ordered the Lytle Trust to expunge the Abstracts of Judgment that it had
 12 recorded against properties owned by the Boulden Trust and Lamothe Trust. The Lytle Trust released
 13 the Abstracts of Judgment, but immediately recorded two *lis pendens* against the Boulden Trust and
 14 Lamothe Trust properties. Thereafter, the Lytle Trust refused to voluntarily expunge the *lis pendens* and
 15 the Boulden Trust and Lamothe Trust were forced to file a Motion to Expunge *Lis Pendens*. This Court
 16 summarily granted the Motion on June 23, 2017 and the *lis pendens* were ordered stricken, but the Lytle
 17 Trust was not held in contempt.

18 5. The Lytle Trust appealed the July 2017 Order and the Nevada Supreme Court issued an
 19 Order of Affirmance on December 4, 2018 in Case No. 73039, *Trudi Lee Lytle v. Marjorie B. Boulden*
 20 (“First Order of Affirmance”).²

21 6. After entry of the July 2017 Order, the September Trust, Zobrist Trust, Sandoval Trust,
 22 and Gegens, which also own property within the Rosemere Subdivision, approached the Lytle Trust and
 23 requested that it release the Abstracts of Judgment recorded against their properties as well. After the
 24 Lytle Trust refused to release the Abstracts of Judgment as to their properties, the September Trust,
 25 Zobrist Trust, Sandoval Trust, and Gegens filed a Complaint against the Lytle Trust in Case No. A-17-
 26 765372-C, which was consolidated with this Case (Case No. A-16-747900-C) on February 21, 2018.

27 ² The Boulden Trust sold its property to the Dismans on August 4, 2017. This Court subsequently held,
 28 in an Order entered on or about December 26, 2018, that the July 2017 Order likewise applied to the
 Rosemere Litigation II Judgment, which the Lytle Trust sought to enforce against the Lamothe Trust
 and the Dismans’ and their properties after entry of the July 2017 Order.

1 7. On May 24, 2018, this Court entered its Order Granting Motion for Summary Judgment
2 or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary
3 Judgment (“May 2018 Order”) in favor of the September Trust, Zobrist Trust, Sandoval Trust, and
4 Gegens and against the Lytle Trust. The May 2018 Order is hereby incorporated by reference.

5 8. In the May 2018 Order, the Court concluded, in part, that: the Association is a “limited
6 purpose association” as referenced in NRS 116.1201(2); as a limited purpose association, NRS 116.3117,
7 the statute upon which the Lytle Trust relied to record the Abstracts of Judgment, is not applicable to the
8 Association; as a result of the Rosemere Litigation I between the Lytle Trust and the Association, the
9 Amended CC&Rs at issue were judicially declared to have been improperly adopted and recorded, were
10 invalid, have no force and effect, and were declared *void ab initio*; the September Trust, Zobrist Trust,
11 Sandoval Trust, and Gegens were not parties to the Rosemere Litigation I, Rosemere Litigation II, or
12 Rosemere Litigation III; the September Trust, Zobrist Trust, Sandoval Trust, and Gegens were not
13 “losing parties” in the Rosemere Litigation I, Rosemere Litigation II, or Rosemere Litigation III per
14 Section 25 of the Original CC&Rs; the Judgments issued in the Rosemere Litigation I, Rosemere
15 Litigation II, or Rosemere Litigation III (collectively the “Rosemere Judgments”) against the Association
16 in favor of the Lytle Trust are not against, and are not an obligation of, the September Trust, Zobrist
17 Trust, Sandoval Trust, or Gegens to the Lytle Trust; and the Rosemere Judgments against the Association
18 are not an obligation or debt owed by the September Trust, Zobrist Trust, Sandoval Trust, or Gegens to
19 the Lytle Trust.

20 9. The May 2018 Order, at page 10, lines 10-19, contained the following permanent
21 injunction:

22 IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust
23 is permanently enjoined from recording and enforcing the Judgments obtained from the
24 Rosemere Litigation I, Rosemere Litigation II and Rosemere Litigation III, or any other
judgments obtained against the Association, against the September Property, Zobrist Property,
Sandoval Property or Gegen Property.

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

1 10. On June 19, 2018, the Lytle Trust appealed the May 2018 Order to the Nevada Supreme
2 Court, Case No. 76198, *Trudi Lee Lytle v. September Trust, Dated March 23, 1972*. This appeal was
3 consolidated with the Lytle Trust's subsequent appeal of an award of attorney's fees and costs in favor
4 of the September Trust, Zobrist Trust, Sandoval Trust, and Gegens under NRS 18.010(2)(b), Case No.
5 77007. The Supreme Court entered its Order of Affirmance affirming the May 2018 Order and
6 subsequent fees order on March 2, 2020 ("Second Order of Affirmance").

7 11. On June 8, 2018, the Lytle Trust filed a new action, Case No. A-18-775843-C, *Trudi Lee*
8 *Lytle et al. v. Rosemere Estates Property Owners' Association* ("Receivership Action"), asserting claims
9 against the Association for (a) Declaratory Judgment, and (b) Breach of Contract/Easement Agreement.
10 The prayer for relief in the Receivership Action sought:

11 a. an Order declaring that the Association must continue to operate as required by the
12 CC&Rs and Chapters 82 and 116 of the Nevada Revised Statutes, which includes, but is not limited
13 to: 1) maintaining the landscaping in the exterior wall planters; 2) maintaining the exterior
14 perimeter and frontage; 3) maintaining the entrance gate; 4) maintaining the private drive and
15 sewer system; 5) ensuring that homeowners are paying their assessments; 6) seeking collection
16 activity against any homeowners that have failed to pay their assessments; 7) paying known
17 creditors of the Association; 8) specially assessing the homeowners to ensure that enough proceeds
18 exist within the HOA funds to pay all known creditors assessing; and 9) any other activity required
19 under Nevada law.

20 b. specific performance requiring the Association to comply with the CC&Rs, as well
21 as other Nevada law, with respect to the Association's maintenance and day-to-day activities;

22 c. injunctive relief preventing the Association from violating the terms of the CC&RS,
23 as well as other Nevada law, moving forward;

24 d. appointment of a receiver to handle the maintenance obligations and day-to-day
25 activities, including the financial activities regarding assessments and creditors, until a duly
26 constituted board may be instituted and power transitioned thereto; and
27
28

e. reasonable attorneys' fees, costs of suit and litigation, and such other and further relief as the Court deems just and proper

12. The Complaint in the Receivership Action alleges that the Association is not functioning, that the common elements of the community are not being maintained, and that “the Association has not paid known creditors of the Association, which includes, but is not limited to, the annual dues to the Nevada Secretary of State or the Nevada Department of Real Estate or the Lytles, which hold multiple judgments against the Association.” Complaint at ¶ 21.

13. In a Renewed Application for Appointment of Receiver filed by the Lytle Trust on October 24, 2019 (“Application”) in the Receivership Action, the Lytle Trust asserts that one reason for a Receiver over the Association was due to the Association’s refusal to pay the Rosemere Judgments, including its refusal to assess Association members, including the Plaintiffs, so the Association could pay the Rosemere Judgments. Application at 3:2-4, 5:17-18 (“Additional grounds exist because the Association is refusing to pay and refusing to assess Association members related to various monetary judgments awarded to the Lytles against the Association”), 13:19-28 (“A receiver may be appointed...[a]fter judgment, to carry the judgment into effect” (quoting NRS 32.010(3))), 14:1-2, 16-28 (“the Lytle Trust obtained judgments against the Association and a Receiver is needed to carry those judgments into effect”), 15:20-25 (“the Association has a duty...to pay its debts, including the Judgments obtained by the Lytle Trust”), 16:17-22 (“the Association is without any governing body to assess the homeowners and pay the judgments”).

14. The Lytle Trust disclosed to the judge in the Receivership Action (the “Receivership Court”) that the Amended CC&Rs had been judicially declared *void ab initio* and of no force or effect. *Id.* at 8:11-12 (the District “Court determined that the Amended CC&Rs were not properly adopted or recorded, that the Amended CC&Rs are invalid, and that the Amended CC&Rs have no force or effect”); 8 at n.3 (“Note, Rosemere 2 Litigation commenced more than six years *before* the Court in Rosemere 1 Litigation ruled that the Amended CC&Rs were invalid.”) (emphasis in original); 9:13-17 (“In granting the Lytle Trust’s Motion for Attorneys’ Fees, the district court in the Rosemere 1 and Rosemere 2 Litigations . . . held that the Lytle Trust could recover attorneys’ fees under the Amended CC&Rs because

1 that document, while declared *void ab initio* by the district court, was in effect and enforced by the
2 Association against the Lytle Trust at all times during the underlying litigation.”).

3 15. However, The Lytle Trust further argued in the Application that the Amended CC&Rs
4 provide authority for a receiver to make special assessments on the Plaintiffs’ and other owners’
5 properties to collect funds to pay the Rosemere Judgments. *Id.* at 11:4-28, 13:1-17, 17:1-9. The Lytle
6 Trust’s Application included a section heading in its Statement of Fact section titled “The Amended
7 CC&Rs Grant the Association Authority to Assess Each Unit for Payment of Judgments Against the
8 Association.” *Id.* at 11:4-5. The Lytle Trust also represented that “the District Court already ruled that
9 the Association is liable for attorneys’ fees, costs and damages pursuant to the Amended CC&Rs, which
10 provide the Association with the ability to specially assess each property (unit) for the costs of the
11 judgments. Amended CC&Rs ¶ 10.11, Exhibit 16.” *Id.* at 17:6-9.

12 16. The Lytle Trust did not inform the Receivership Court about this Case, the July 2017 Order,
13 May 2018 Order, or the Orders of Affirmance.³ The Lytle Trust did not inform the Receivership Court
14 that this Court had issued permanent injunctions against the Lytle Trust relating to enforcement of the
15 Rosemere Judgments against the Plaintiffs, the Boulden Trust, the Lamothe Trust, the Dismans, or their
16 properties.

17 17. On December 18, 2019, based on the Lytle Trust’s Application, the Receivership Court
18 entered an Order Appointing a Receiver of Defendant Rosemere Property Owners Association (“Order
19 Appointing Receiver”). The Order Appointing Receiver, drafted by the Lytle Trust, directs the Receiver
20 to “[i]ssue and collect a special assessment upon all owners within the Association to satisfy the Lytle
21 Trust’s judgments against the Association.” Order Appointing Receiver at 2:19-20. It further empowers
22 the Receiver with “the authority to assess all Association unit owners to pay for any operation costs or
23 to pay for judgments against the Association. If an Association member does not pay an assessment then
24 the Receiver may proceed to foreclose on said member’s ownership interest in the property.” *Id.* at 6:4-
25 7.

26
27 ³ The Court notes that the Second Order of Affirmance was issued after entry of the Order Appointing
28 Receiver and the Lytle Trust could not have informed the Receivership Court of it prior to entry of the
Order Appointing Receiver.

1 18. On or around January 22, 2020, the Plaintiffs and the Dismans⁴ each received a letter from
2 Kevin Singer of Receivership Specialists regarding the appointment of Mr. Singer as the Receiver in the
3 Receivership Action (“Receiver Letter”). In the Receiver Letter, Mr. Singer states that “[t]he appointment
4 of the receivership is predicated on judgments against the HOA in the approximate amount of \$1,481,822
5 by the Lytle family (“the Plaintiff”).... These judgments need to be paid and the Court agreed with the
6 Plaintiff by appointing a Receiver to facilitate the satisfying of the judgments.... We would like to meet
7 with title holding members of the HOA...[to] share three ideas we have to pay these judgments.”

8 19. On January 29, 2020, counsel for Plaintiffs sent a letter to the Receiver, with a copy to
9 counsel for the Lytle Trust, notifying the Receiver that the Orders and Permanent Injunctions issued in
10 this Case prevent further effort to collect the Rosemere Judgments from the Plaintiffs or other property
11 owners. The Plaintiffs expressed their belief this effort to assess the property owners to pay the Rosemere
12 Judgments violated this Court’s Orders and demanded that the Receiver cease and desist.

13 20. On March 4, 2020, the Plaintiffs filed the instant Motion informing the Court about the
14 Lytle Trust’s actions and seeking sanctions for violation of this Court’s May 2018 Order. The Boulden
15 Trust and Lamothe Trust filed a Joinder to the Motion on March 5, 2020.⁵ The Dismans filed a Joinder
16 to the Motion on March 6, 2020.

17 21. The Association has never been a party to this Case.

18 CONCLUSIONS OF LAW

19 1. This case has a history, such as the filing of the *lis pendens* against the Boulden Trust and
20 Lamothe Trust properties after the Court had ordered the expungement of the Abstracts of Judgment and
21 continued enforcement of the Abstracts of Judgment against the September Trust, Zobrist Trust,
22 Sandoval Trust, and Gegens’ properties after entry of the July 2017 Order, that demonstrates that the
23 Lytle Trust does not respect this Court’s Orders.

24
25
26 ⁴ At the time, the Boulden Trust and Lamothe Trust no longer held title to any property within the
Rosemere Subdivision, having sold their properties on August 4, 2017, and May 1, 2019, respectively.

27 ⁵ After the hearing on the Motion but prior to entry of this Order, the Boulden Trust and the Lamothe
28 Trust withdrew their Joinders pursuant to a settlement with the Lytle Trust. Therefore, the Boulden
Trust and Lamothe Trust are no longer considered movants for purposes of the relief granted herein.

2. This Court has inherent power to enforce its decrees, orders and judgments. A party is required to adhere to court orders, even disagreeable or erroneous orders, until terminated or overturned.

3. The proper course of action if a party disagrees with a Court order is to appeal.

4. The May 2018 Order must be obeyed by the Lytle Trust.

5. Each paragraph, each finding of fact, and each conclusion of law in the May 2018 Order must be given its plain meaning, and each paragraph of that Order's permanent injunction must be obeyed by the Lytle Trust.

6. As a result of the Findings of Fact and Conclusions of Law in the May 2018 Order, there were specific orders which are not mutually exclusive. Each issue ordered by the Court should be given its meaning, and they are not in conflict.

7. The Court's factual determinations and conclusions of law culminated with the permanent injunction language starting at Page 10, Line 10 of the May 2018 Order, which stated:

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

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

8. These paragraphs are not mutually exclusive and each must be obeyed by the Lytle Trust.

9. The Findings of Fact, Conclusions of Law, and Orders contained in the May 2018 Order, including the permanent injunctions, are clear, specific and unambiguous as to what the parties could and could not do in this case. Further, the terms of the permanent injunction are specific and definite so that the Lytle Trust could readily know exactly what duties or obligations were imposed on it.

10. The May 2018 Order's permanent injunction clearly precluded the Lytle Trust from doing anything as it relates to enforcing and recording the Rosemere Judgments against the Plaintiffs and Dismans or their properties.

11. Indeed, the Lytle Trust has no judgment creditor rights to try to collect the Rosemere Judgments from the Plaintiffs or Dismans in any way, shape, or form.

19. In addition, the court may award “reasonable expenses, including, without limitation, attorney’s fees, incurred by the party as a result of the contempt.” NRS 22.100(3).

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

IT IS HEREBY ORDERED ADJUDGED AND DECREED that Plaintiffs' Motion for Order to Show Cause Why the Lytle Trust Should Not Be Held in Contempt for Violation of Court Orders, as well as the Joinders thereto filed by the Boulden Trust, the Lamothe Trust, and the Dismans, are GRANTED.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust violated the May 2018 Order.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust is in contempt of the May 2018 Order.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust shall pay a \$500 penalty to each movant for violation of the May 2018 Order; specifically, \$500 payable to the September Trust, \$500 payable to the Zobrist Trust, \$500 payable to the Sandoval Trust, \$500 payable to the Gegens, and \$500 payable to the Dismans.

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1 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the September
 2 Trust, Zobrist Trust, Sandoval Trust, Gegens, and Dismans, may file applications for their reasonable
 3 expenses, including, without limitation, attorney's fees, incurred by the party as a result of the contempt.
 4 The Court will consider such applications on the merits.

5 **IT IS SO ORDERED.**

6 Dated this 22 day of May, 2020.

7 
 8 DISTRICT COURT JUDGE CG

9 **Submitted by:**

10 **CHRISTENSEN JAMES & MARTIN**

11 /s/ Wesley J. Smith

12 Wesley J. Smith, Esq.
 13 Nevada Bar No. 11871
 14 Laura J. Wolff, Esq.
 15 Nevada Bar No. 6869
 16 7440 W. Sahara Ave.
 17 Las Vegas, NV 89117
 18 *Attorneys for Plaintiffs September Trust,*
 19 *Zobrist Trust, Sandoval Trust, and*
 20 *Dennis & Julie Gegen*

Approved as to Form and Content by:

FIDELITY NATIONAL LAW GROUP

/s/ Christina H. Wang

CHRISTINA H. WANG, ESQ.
 Nevada Bar No. 9713
 8363 W. Sunset Road, Suite 120
 Las Vegas, Nevada 89113
Attorneys for Robert & Yvonne Disman

16 **Reviewed by Not Approved by:**

17 **LEWIS ROCA ROTHBERGER CHRISTIE**
 18 **LLP**

19 Reviewed But Not Approved

20 DAN R. WAITE, ESQ.
 21 Nevada Bar 4078
 22 3993 Howard Hughes Parkway, Suite 600
 23 Las Vegas, Nevada 89169
 24 *Attorneys for Lytle Trust*

RE: Case No. A-16-747800-C - Boulden v. Lytle - ORDR - Proposed Order Granting Plaintiffs' Motion for Order to Show Cause

Wang, Christina <Christina.Wang@fnf.com>

Mon 5/18/2020 9:52 AM

To: Wesley Smith <wes@cjmlv.com>

Cc: Engelman, Lace <Lace.Engelman@fnf.com>

Approved – thanks.

Christina H. Wang

Litigation Counsel

Fidelity National Law Group

8363 W. Sunset Road, Suite 120

Las Vegas, Nevada 89113

702-667-3000 (Main)

702-667-3002 (Direct)

702-938-8721 (Fax)

christina.wang@fnf.com

PLEASE NOTE THAT OUR OFFICE HAS MOVED TO THE ABOVE ADDRESS.

The Law Division of Alamo Title Insurance, Chicago Title Insurance Co., Commonwealth Land Title Insurance Co., Fidelity National Title Insurance Co., and Fidelity National Title Group, Inc.

THIS ELECTRONIC MAIL MESSAGE AND ANY ATTACHMENTS ARE INTENDED ONLY FOR THE USE OF THE ADDRESSEE(S) NAMED ABOVE AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF YOU ARE NOT AN INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THIS E-MAIL TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU RECEIVED THIS E-MAIL MESSAGE IN ERROR, PLEASE IMMEDIATELY NOTIFY THE SENDER BY REPLYING TO THIS MESSAGE OR BY TELEPHONE. THANK YOU.

From: Wesley Smith <wes@cjmlv.com>

Sent: Monday, May 18, 2020 9:45 AM

To: Wang, Christina <Christina.Wang@fnf.com>

Cc: Engelman, Lace <Lace.Engelman@fnf.com>

Subject: Re: Case No. A-16-747800-C - Boulden v. Lytle - ORDR - Proposed Order Granting Plaintiffs' Motion for Order to Show Cause

IMPORTANT NOTICE - This message sourced from an external mail server outside of the Company.

Christina,

Per our discussion, can you please approve this version which adds the date to footnote 2?

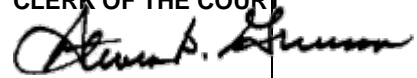
Wes Smith

Christensen James & Martin

EXHIBIT B

001606

EXHIBIT B



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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

**NOTICE OF ENTRY OF ORDER
DENYING DEFENDANT LYTLE
TRUST'S MOTION FOR
CLARIFICATION AND EX PARTE
REQUEST FOR ORDER
SHORTENING TIME**

Date: July 2, 2020
Time: 9:00 a.m.

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

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

CONSOLIDATED

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

5 Plaintiffs,

6 vs.

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

11 Defendants.

12 PLEASE TAKE NOTICE that on July 15, 2020, an Order Denying Defendant Lytle
13 Trust's Motion for Clarification and Ex Parte Request for Order Shortening Time was filed with
14 the Court, a copy of which is attached hereto.

15 DATED this 15th day of July, 2020.

16 **CHRISTENSEN JAMES & MARTIN**

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

18 Wesley J. Smith, Esq.

19 Nevada Bar No. 11871

20 Laura J. Wolff, Esq.

21 Nevada Bar No. 6869

22 7440 W. Sahara Ave.

23 Las Vegas, NV 89117

24 *Attorneys for Plaintiffs September Trust,*

25 *Zobrist Trust, Sandoval Trust, and*

26 *Dennis & Julie Gegen*

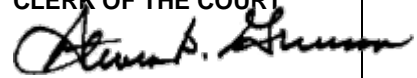
CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin. On July 15, 2020, I caused a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER DENYING DEFENDANT LYTTLE TRUST'S MOTION FOR CLARIFICATION AND EX PARTE REQUEST FOR ORDER SHORTENING TIME, to be served in the following manner:

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

Liz Gould (liz@foleyoakes.com)
Daniel Foley (Dan@foleyoakes.com)
Joel Henriod (JHenriod@LRRC.com)
Daniel Polsenberg (DPolsenberg@LRRC.com)
Dan Waite (DWaite@LRRC.com)
Luz Horvath (lhorvath@lrrc.com)
Lisa Noltie (lnoltie@lrrc.com)
Christina Wang (christina.wang@fnf.com)
FNLG Court Filings (FNLG-Court-Filings-NV@fnf.com)
Maren Foley (maren@foleyoakes.com)
Richard Haskin (rhaskin@gibbsgiden.com)
Robin Jackson (rjackson@gibbsgiden.com)
Shara Berry (sberry@gibbsgiden.com)
Daniel Hansen (dhansen@gibbsgiden.com)

/s/ Natalie Saville
Natalie Saville



1 **ORDR**

2 **CHRISTENSEN JAMES & MARTIN**

3 KEVIN B. CHRISTENSEN, ESQ.

Nevada Bar No. 175

4 WESLEY J. SMITH, ESQ.

Nevada Bar No. 11871

5 LAURA J. WOLFF, ESQ.

Nevada Bar No. 6869

6 7440 W. Sahara Avenue

Las Vegas, Nevada 89117

7 Tel.: (702) 255-1718

Facsimile: (702) 255-0871

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

Attorneys for September Trust, Zobrist Trust, Sandoval Trust

and Dennis & Julie Gegen

9 **EIGHTH JUDICIAL DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

17 Plaintiffs,

18 vs.

19 TRUDI LEE LYTLE, JOHN ALLEN
20 LYTLE, THE LYTLE TRUST, DOES I
21 through X, and ROE CORPORATIONS I
22 through X,

23 Defendants.

Case No.: A-16-747800-C

Dept. No.: XVI

**ORDER DENYING DEFENDANT
LYTLE TRUST'S MOTION FOR
CLARIFICATION AND EX PARTE
REQUEST FOR ORDER
SHORTENING TIME**

Date: July 2, 2020

Time: 9:00 a.m.

24 SEPTEMBER TRUST, DATED MARCH 23,
25 1972; GERRY R. ZOBRIST AND JOLIN G.
26 ZOBRIST, AS TRUSTEES OF THE GERRY
27 R. ZOBRIST AND JOLIN G. ZOBRIST
28 FAMILY TRUST; RAYNALDO G.
SANDOVAL AND JULIE MARIE
SANDOVAL GEGEN, AS TRUSTEES OF
THE RAYNALDO G. AND EVELYN A.
SANDOVAL JOINT LIVING AND

Case No.: A-17-765372-C

Dept. No.: XVI

CONSOLIDATED

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

5 Plaintiffs,

6 vs.

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

11 Defendants.

12 Presently before the Court is Defendant Lytle Trust's Motion for Clarification and Ex Parte
13 Request for Order Shortening Time ("Motion for Clarification") and the Opposition filed by the
14 Plaintiffs, and the Reply, which came on for hearing on July 2, 2020 at 9:00 a.m. in Department XVI of
15 the Eighth Judicial District Court, Clark County, Nevada.

16 Wesley J. Smith, Esq. of Christensen James & Martin, Chtd. appeared on behalf of September
17 Trust, dated March 23, 1972, Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist
18 and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees
19 of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust dated May 27, 1992, and
20 Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint Tenants (collectively the "Plaintiffs").
21 Christina H. Wang, Esq. of Fidelity National Law Group appeared on behalf of Robert Z. Disman and
22 Yvonne A. Disman (the "Dismans"). Dan R. Waite, Esq. of Lewis Roca Rothgerber Christie LLP
23 appeared on behalf of Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust ("Lytle
24 Trust").

25 The Court having considered the Motion, Opposition, and Reply, having heard the arguments of
26 counsel, and with good cause appearing therefore, the Court hereby denies the Motion and enters the
27 following Findings of Fact, Conclusions of Law, and Order:

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FINDINGS OF FACT

1. On May 24, 2018, this Court entered its Order Granting Motion for Summary Judgment or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary Judgment (“May 2018 Order”) in favor of the September Trust, Zobrist Trust, Sandoval Trust, and Gegens and against the Lytle Trust. The May 2018 Order is hereby incorporated by reference.

2. On October 24, 2019, the Lytle Trust filed its Renewed Application for Appointment of Receiver in *Trudi Lee Lytle and John Allen Lytle, as trustees of the Lytle Trust v. Rosemere Estates Property Owners’ Association*, Case No. A-18-775843-C, Eighth Judicial District Court, Clark County, Nevada, which case was assigned to Judge J. Kishner (the “Receivership Action”).

3. On December 18, 2019, Judge Kishner entered her Order Appointing a Receiver of Defendant Rosemere Property Owners Association (the “Order Appointing Receiver”). Among other rights, powers, and duties, the Order Appointing Receiver instructed the receiver to “[i]ssue and collect a special assessment upon all owners within the Association to satisfy the Lytle Trust’s judgments against the Association.” (Order Appointing Receiver at 2:19-20).

4. On March 4, 2020, Plaintiffs filed a Motion for Order to Show Cause Why the Lytle Trust Should Not Be Held in Contempt for Violation of Court Orders (“Contempt Motion”), which alleged the Lytle Trust violated the May 2018 Order by seeking the appointment of a receiver over the Rosemere Estates Property Owners’ Association (the “Association”) in the Receivership Action for the purpose of collecting its Judgments through special assessments on the Plaintiffs and other property owners. The Lytle Trust opposed the Contempt Motion.

5. The Contempt Motion came on for hearing on April 22, 2020.

6. During the hearing held on April 22, 2020, with regard to the scope of the May 2018 Order, the following exchange occurred:

MR WAITE: And I’ll ask it again, and I’ll ask it maybe not as a rhetorical question.

Pending the answer, quite honestly, I may have nothing else to say. I may have nothing that I know of to say. But *did you intend by your Permanent Injunction*

1 *here to strip the Lytle Trust of all of its judgment creditor rights against the*
2 *judgment debtor association?*

3 THE COURT: Well, the association wasn't a party, but the bottom line is this: **I**
4 **stripped the Lytle Trust of their ability and right to enforce those judgments vis-**
5 **a-vis the homeowners in this case.**

6 April 22, 2020 Transcript at 38:25-39:12 (emphasis added).

7 7. At the end of the hearing, the Court entered an oral ruling granting the Contempt Motion.

8 8. On May 18, 2020, the Plaintiffs submitted a proposed order with explanation of the
9 wording that the Parties could not agree on.

10 9. On May 19, 2020, the Lytle Trust submitted a competing proposed order and filed the
11 Motion for Clarification seeking to clarify, *inter alia*, what judgment creditor rights the Lytle Trust
12 could or could not exercise without violating the May 2018 Order.

13 10. On May 22, 2020, this Court entered its Findings of Fact, Conclusions of Law, and Order
14 Granting Plaintiffs' Motion for Order to Show Cause Why the Lytle Trust Should Not Be Held in
15 Contempt for Violation of Court Orders ("Contempt Order") against the Lytle Trust. The May 2020
16 Order is hereby incorporated by reference.

17 11. The Contempt Order entered on May 22, 2020 was the Order proposed by the Plaintiffs.

18 12. The Contempt Order, with regard to the May 2018 Order, stated the following
19 Conclusions of Law:

20 10. The May 2018 Order's permanent injunction clearly precluded the Lytle
21 Trust from doing anything as it relates to enforcing and recording the Rosemere
22 Judgments ***against the Plaintiffs and Dismans or their properties.***

23 11. Indeed, the Lytle Trust has no judgment creditor rights to try to collect the
24 Rosemere Judgments ***from the Plaintiffs or Dismans*** in any way, shape, or form.

25 Contempt Order at 10:23-28 (emphasis added).

26 13. The Defendant's proposed order did not have the language emphasized above and this
27 difference between the competing orders was highlighted by the parties in their proposals.
28

14. All of the Court's decisions in this case, including the May 2018 Order and the Contempt Order, are based upon the history of this case, and more specifically, the Findings of Fact, Conclusions of Law, and Order Granting the Boulden Trust and Lamothe Trust's Motion for Partial Summary Judgment entered by the Court on April 26, 2017 ("April 2017 Order") against the Lytle Trust.¹ The April 2017 Order is hereby incorporated by reference.

15. The April 2017 Order has been the ruling of this Court for over three years, was subject to review by the Nevada Supreme Court, and withstood appellate scrutiny.

16. The May 2018 Order referenced the April 2017 Order and borrowed its Findings of Fact and Conclusions of Law.

17. The April 2017 Order states clearly what actions can and cannot be taken by the Lytle Trust, as follows:

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

19. April 2017 Order, 7:1-3; July 2017 Order 7:1-3.

20. The April 2017 Order also contains the following:

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

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

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

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

¹ As noted in the Contempt Order at 3:8-14 and n.1, the April 2017 Order was modified on July 27, 2017 by removing any order on the slander of title claim, which is not at issue in the present Motion and did not impact the language of the April 2017 Order quoted herein.

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

April 2017 Order at 4:23-5:7; July 2017 Order at 4:14-23.

CONCLUSIONS OF LAW

1. The Court made its intentions clear at the April 22, 2020 hearing when it stated “I stripped the Lytle Trust of their ability and right to enforce those judgments vis-a-vis the homeowners in this case.” April 22, 2020 Transcript at 38:25-39:12.

2. Any doubt as to the Court’s intent regarding the May 2018 Order was resolved by entry of the written May 2020 Order after consideration of the competing orders submitted by the Plaintiffs and Defendant, specifically when the Court entered the following Conclusions of Law:

10. The May 2018 Order’s permanent injunction clearly precluded the Lytle Trust from doing anything as it relates to enforcing and recording the Rosemere Judgments ***against the Plaintiffs and Dismans or their properties.***

11. Indeed, the Lytle Trust has no judgment creditor rights to try to collect the Rosemere Judgments ***from the Plaintiffs or Dismans*** in any way, shape, or form.

Contempt Order at 10:23-28 (emphasis added).

3. The Court conclusively answered the Lytle Trust’s question by entering the Order prepared by the Plaintiffs that included the emphasized language.

4. The Court did not hold the Lytle Trust in contempt for violating the April 2017 Order and does not expand its Contempt Order to include the April 2017 Order by entering this Order.

5. The thrust and focus of all the Court’s decisions in this matter are based upon the history of this case, including the April 2017 Order entered 3 years ago.

6. The April 2017 Order stating Defendants are permanently enjoined from taking “any action” in the future against the Plaintiffs or their properties based upon the Rosemere LPA Litigation was also clear.

7. The broad and the plain meaning of the term “any action” means any action, whether direct or indirect.

1 8. The April 2017 Order must be looked at in its entirety to determine its thrust, scope and
2 impact with respect to what kind of action can be taken by the Lytle Trust with regard to collecting on
3 its Judgments against the Association.

4 9. The April 2017 Order made clear that the Rosemere Judgments are not against the
5 Plaintiffs or an obligation or debt owed by the Plaintiffs.

6 10. The April 2017 Order also made clear that the Lytle Trust cannot take any action against
7 the Plaintiffs to attempt to collect its Judgments against the Association.

8 11. The May 2018 Order contains nearly identical Findings of Fact, Conclusions of Law, and
9 Orders.

10 12. Therefore, any action by the Lytle Trust to collect its Judgments against the Association
11 that results in payment of the Judgments by the Plaintiffs is a violation of the May 2018 Order.

12 13. This Court cannot make decisions based upon hypothetical situations presented by the
13 Lytle Trust. A case has to be ripe for adjudication and any decision based upon the facts of this case.

14 14. Because the language of the Orders discussed herein is clear, there is no clarification
15 needed or that the Court can provide.

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ORDER

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

IT IS HEREBY ORDERED ADJUDGED AND DECREED that Defendant's Lytle Trust Motion for Clarification and Ex Parte Request for Order Shortening Time is DENIED.

IT IS SO ORDERED.

Dated this 15th day of July, 2020.


DISTRICT COURT JUDGE

CG

Submitted by:

CHRISTENSEN JAMES & MARTIN

/s/ Wesley J. Smith

Wesley J. Smith, Esq.

Nevada Bar No. 11871

Laura J. Wolff, Esq.

Nevada Bar No. 6869

7440 W. Sahara Ave.

Las Vegas, NV 89117

Attorneys for Plaintiffs September Trust,

Zobrist Trust, Sandoval Trust, and

Dennis & Julie Gegen

**Approved as to Form and Content —
Reserving All Appeal Rights – by:**

**LEWIS ROCA ROTHBERGER CHRISTIE
LLP**

/s/ Dan R. Waite

DAN R. WAITE, ESQ.

Nevada Bar 4078

3993 Howard Hughes Parkway, Suite 600

Las Vegas, Nevada 89169

Attorneys for Lytle Trust

RE: Dept 16 - A-16-747800-C - Boulden v. Lytle - Proposed Order Denying Motion for Clarification

Waite, Dan R. <DWaite@lrrc.com>

Tue 7/14/2020 9:15 AM

To: Wesley Smith <wes@cjmlv.com>

Thank you, Wes. You have my authorization to include my /s/ electronic signature and to submit the Order to the Court. All the best,

Dan

Dan R. Waite

Partner

702.474.2638 office

702.949.8398 fax

dwaite@lrrc.com

Lewis Roca
ROTHGERBER CHRISTIE

Lewis Roca Rothgerber Christie LLP

3993 Howard Hughes Parkway, Suite 600

Las Vegas, Nevada 89169

lrrc.com

From: Wesley Smith <wes@cjmlv.com>

Sent: Tuesday, July 14, 2020 9:10 AM

To: Waite, Dan R. <DWaite@lrrc.com>

Subject: Dept 16 - A-16-747800-C - Boulden v. Lytle - Proposed Order Denying Motion for Clarification

[EXTERNAL]

Dan,

Attached please find the final version of the Proposed Order Denying Motion for Clarification in the above referenced matter. Please review and if it meets your approval, please respond confirming that I have your permission to affix your /s/ electronic signature and submit the Order to the Court.

Thanks,

Wes Smith

Christensen James & Martin

7440 W. Sahara Ave.

Las Vegas, NV 89117

Tel. (702) 255-1718

Fax (702) 255-0871

wes@cjmlv.com

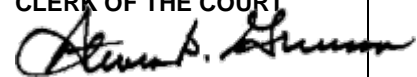
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47

47



ERR

JOEL D. HENRIOD
Nevada Bar No. 8492
DANIEL F. POLSENBERG
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DWaite@LRRC.com

*Attorneys for Defendants Trudi Lee Lytle and
John Allen Lytle, as Trustees of the Lytle Trust*

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

TRUDI LEE LYTLE; and JOHN ALLEN
LYTLE, as trustees of the Lytle Trust,
DOES I through X, inclusive, and ROE
CORPORATIONS I through X,

Defendants.

Case No. A-16-747800-C

Dep't No. 16

**ERRATA TO
AMENDED CASE APPEAL STATEMENT**

SEPTEMBER TRUST, DATED MARCH 23,
1972; GERRY R. ZOBRIST and JOLIN G.
ZOBRIST, as Trustees of the Gerry R.
Zobrist and Jolin G. Zobrist Family
Trust; RAYNALDO G. SANDOVAL and
JULIE MARIE SANDOVAL GEGEN, As
Trustees of the Raynaldo G. and
Evelyn A. Sandoval Joint Living and
Devolution Trust Dated May 27, 1992;
and DENNIS A. GEGEN and JULIE S.
GEGEN, husband and wife, as joint
tenants,

Plaintiffs,

v.

TRUDI LEE LYTLE; and JOHN ALLEN

Consolidated with:

Case No. A-17-765372-C

Dep't No. 16

1 LYTLE, as trustees of the Lytle Trust,
2 JOHN DOES I through V, inclusive, and
3 ROE ENTITIES I through V, inclusive,

4 Defendants.

5 The exhibit to defendants' July 31, 2020, "Amended Case Appeal
6 Statement" was inadvertently omitted. It is attached here.

7 Dated this 4th day of August, 2020.

8 LEWIS ROCA ROTHGERBER CHRISTIE LLP

9
10 By: /s/Joel D. Henriod

11 JOEL D. HENRIOD (SBN 8492)
12 DANIEL F. POLSENBERG (SBN 2376)
13 DAN R. WAITE (SBN 4078)
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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of August, 2020, I served the foregoing
“Errata to Amended Case Appeal Statement” on counsel by the Court’s
electronic filing system to the persons and addresses listed below:

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Jolin G. Zobrist Family Trust,
Raynaldo G. Sandoval and Julie
Marie Sandoval Gegen, as trustees
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Sandoval Joint Living and
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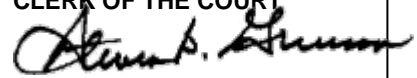
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trustees of the Jacques & Linda Lamothe
Living Trust*

/s/ Jessie M. Helm
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EXHIBIT A

001623

EXHIBIT A



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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

SEPTEMBER TRUST, DATED MARCH 23,
1972; et al,

Plaintiffs

v.

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

Defendants.

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

**WITHDRAWAL OF JOINDER
ON PLAINTIFFS SEPTEMBER
TRUST ET. AL.'S MOTION FOR
AN ORDER TO SHOW CAUSE
WHY THE LYTLE TRUST
SHOULD NOT BE HELD IN
CONTEMPT FOR VIOLATION
OF COURT ORDERS**

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

1 Plaintiffs Marjorie B. Boulden, Trustee Of The Marjorie B. Boulden Trust (the “Boulden
2 Trust”), Linda Lamothe And Jacques Lamothe, Trustees Of The Jacques & Linda Lamothe
3 Living Trust (“Lamothe Trust”) by and through their attorneys Foley & Oakes, PC, having
4 entered into a settlement agreement with the Lytle Trust with respect to, among other things,
5 resolving the Lytle Trust’s Appeal of this Court’s Order granting the Boulden Trust’s and
6 Lamothe Trust’s Attorneys’ Fees and Costs, hereby provide Notice to the Court and all interested
7 parties that they hereby withdraw their Joinder filed in this case on March 5, 2020, and
8 accordingly waive all relief orally awarded by the Court associated with their Joinder.
9

10 Dated this 14th day of May 2020.

11
12 FOLEY & OAKES, PC

13 **By: /s/ Daniel T. Foley**

14 Daniel T. Foley, Esq.
15 1210 So. Valley View Blvd., Suite # 208
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18 *Attorneys for the Boulden and*
19 *Lamothe Plaintiffs.*
20
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23
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27

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. Rule 5(b), I certify that I am an employee of Foley & Oakes, PC and that on this 14th day of May 2020, I caused this document to be served pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system.

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

/s/ Liz Gould
An employee of Foley & Oakes PC

48

48

No. 81390

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

vs.

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

On Appeal from an Order of the Eighth Judicial District Court, Clark
 County, Nevada; The Honorable Timothy C. Williams, District Court Judge;
 District Court Case No. A-17-765372-C

RESPONDENTS' MOTION TO DISMISS

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POINTS AND AUTHORITIES

I. Introduction

September Trust, dated March 23, 1972 (“September Trust”), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust (“Zobrist Trust”), Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust Dated May 27, 1992 (“Sandoval Trust”), and Dennis A. Gegen and Julie S. Gegen, Husband and Wife as Joint Tenants (hereafter “Gegen”) (hereafter September Trust, Zobrist Trust, Sandoval Trust and Gegen may be collectively referred to as “Respondents”), hereby file this Motion to Dismiss pursuant to NRAP 14(f), which states that if respondent believes there is a jurisdictional defect, respondent should file a motion to dismiss.

There is a jurisdictional defect because this is an Appeal from an order of contempt and there is no rule or statute which authorizes an appeal from an order of contempt. *See* NRAP 3A(b) (listing orders which may be appealed); NRS Chapter 22 (concerning grounds and procedure for imposing contempt sanctions). In fact, contempt orders must be challenged by an original petition pursuant to NRS Chapter 34.

Whereas this is a jurisdictional issue, it may be raised at any time and should be decided now. *See Landreth v. Malik*, 127 Nev. 175, 179, 251 P.3d 163, 166 (2011) (“whether a court lacks subject matter jurisdiction can be raised by the parties at any time, or sua sponte by a court of review, and cannot be conferred by the parties.”) (citation and quotation omitted). This Appeal should be dismissed for lack of jurisdiction.

II. Statement of Relevant Facts

The Respondents filed suit against the Appellants the Lytle Trust in November 2017. On May 24, 2018, summary judgment (“May 2018 Order”), was granted to the Respondents against the Lytle Trust in Case No. A-17-765372-C (consolidated with Case No. A-16-747800-C). On June 19, 2018, the Lytle Trust appealed the May 2018 Order to the Nevada Supreme Court, Case No. 76198. The Supreme Court entered its Order affirming the May 2018 Order on March 2, 2020 (“Order of Affirmance”) (also available at *Lytle v. Sept. Tr., Dated Mar. 23, 1972*, No. 76198, 458 P.3d 361 (Table), 2020 WL 1033050 (Nev. Mar. 2, 2020).

On May 22, 2020, the district court entered the order appealed from in this Case, the Order Granting Plaintiffs’ Motion for Order to Show Cause Why the Lytle Trust Should Not Be Held in Contempt for Violation of Court Orders, concluding that the Lytle Trust had violated the May 2018 Order and holding the Lytle Trust in contempt (the “Contempt Order”). *See Exhibit A to Docketing*

Statement. On June 22, 2020, the Lytle Trust filed its Notice of Appeal of the Contempt Order. On August 5, 2020, the Lytle Trust filed its Amended Notice of Appeal and Docketing Statement. In the Docketing Statement, the Lytle Trust denotes that the nature of the disposition below is an “Order of contempt.” Docketing Statement at 3, Response to Question 4. The Lytle Trust further states that the statute granting this Court jurisdiction to review the Contempt Order is NRAP 3A(b)(8) and explaining “This is an appeal from a post-judgment order finding appellants in contempt and awarding penalties, attorneys’ fees and costs pursuant to NRAP 3A(b)(8).” Docketing Statement at 8, Response to Question 21.

III. Argument

The issue in this Motion to Dismiss is simple. This Court does not have jurisdiction to decide this Appeal because it concerns an order of contempt. This Court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule. *Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013). “Jurisdictional rules go to the very power of this court to act.” *Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987); accord *Phillips v. Welch*, 11 Nev. 187, 188 (1876) (“Every court is bound to know the limits of its own jurisdiction, and to keep within them.”). “[W]here no statutory authority to appeal is granted, no right exists.” *Taylor Constr. Co. v. Hilton Hotels*, 100 Nev. 207, 209, 678 P.2d 1152 (1984) (citing *Kokkos v. Tsalikis*, 91 Nev. 24,

530 P.2d 756 (1975)). As explained below, the Contempt Order is not appealable and does not otherwise qualify as a special order under NRAP 3A(b)(8).

A. *Pengilly* Prevents Appeal of the Contempt Order.

Unless expressly authorized by rule or statute, there is no right to appeal from an order of contempt. *Pengilly v. Rancho Santa Fe Homeowners Ass’n*, 116 Nev. 646, 649, 5 P.3d 569, 571 (2000). In *Pengilly*, the Court explained at the beginning of its opinion a procedural posture very similar to this Case:

This appeal concerns the issue of the appropriate form of review of an order of contempt—a direct appeal or an original petition for relief pursuant to NRS Chapter 34. We take this opportunity to clarify a troublesome area of this court’s jurisdictional case law. We conclude that, as no rule or statute authorizes an appeal from a contempt order, this court does not have jurisdiction over an appeal from such an order. Accordingly, the proper mode of review is by an original writ petition.

116 Nev. at 647, 5 P.3d at 569. The Court ultimately concluded “that this court does not have jurisdiction over an appeal from a contempt order where no rule or statute provides for such an appeal” and dismissed the appeal. 116 Nev. at 649-50, 5 P.3d at 571-72. Here, because the Contempt Order is very plainly an order of contempt and there is no statute or rule authorizing appeal, this Court does not have jurisdiction and this Appeal must be dismissed.

The *Pengilly* Court concluded further that “contempt orders must be challenged by an original petition pursuant to NRS Chapter 34.” 116 Nev. at 649, 5 P.3d at 571. The Court explained:

Writ petitions are also more suitable vehicles for review of contempt orders. Particularly where the purpose of the contempt order is to coerce compliance with the district court's orders, it appears preferable for the district court to be able to modify its orders to meet changing circumstances. A writ petition permits the district court this flexibility because the court retains jurisdiction over the order during the pendency of the writ petition. In contrast, the district court would be divested of jurisdiction to modify or vacate the contempt order once a notice of appeal had been filed.

116 Nev. at 650, 5 P.3d at 571 (citation omitted).

Since *Pengilly* was decided, numerous appeals from contempt orders have been dismissed for lack of jurisdiction (only a few of which are cited here). *See, e.g., Nelson v. Nelson*, 136 Nev. Adv. Op. 36, 466 P.3d 1249, 1252–53 (2020) (citing *Pengilly*); *Alper v. Eighth Jud. Dist. Ct.*, 131 Nev. 430, 432–33, 352 P.3d 28, 30 (2015) (same); *Leverly & Assocs. Law, Chtd. v. Exley*, 466 P.3d 1287 (Table), 2020 WL 4035174, *1 (Nev. 2020) (unpublished disposition) (same); *Goudie v. Packard-Keane*, 406 P.3d 959 (Table), 2017 WL 5956827, *1 (Nev. 2017) (unpublished disposition) (same); *Leavitt v. Abbatangelo*, 404 P.3d 411 (Table), 2017 WL 4950058, *1 (Nev. 2017) (unpublished disposition) (same); *Detwiler v. Baker Boyer Nat'l Bank*, 462 P.3d 254 (Table), 2020 WL 2214148, *2 (Nev. 2020) (unpublished disposition) (same). While many of these dispositions are “unpublished,” they are cited to demonstrate the frequency with which similar appeals are dismissed for lack of jurisdiction.

Since *Pengilly*, the Court has found some exceptions to the general rule that a contempt order is not appealable. For instance, the Court found jurisdiction of contempt orders when they are included with an order that is otherwise independently appealable. *See Yu v. Yu*, 133 Nev. 737, 739, 405 P.3d 639, 640–41 (2017) (appeal allowed to proceed where it also concerned, in addition to order of contempt, order that a party was a vexatious litigation); *Vaile v. Vaile*, 133 Nev. 213, 217, 396 P.3d 791, 794-95 (2017) (appellate jurisdiction proper where appellant challenged order or contempt and post-judgment order concerning child support).

The Court has also noted instances where a statute express grants a right of appeal of an order of contempt. *In re Determination of Relative Rights of Claimants & Appropriators of Waters of Humboldt River Stream Sys. & Tributaries*, 118 Nev. 901, 906, 59 P.3d 1226, 1229 (2002) (NRS 533.22 granted right of appeal and noting that “*Pengilly* relied on the fact that, in general, there is no statutory authority to appeal a contempt order”). The Court also found jurisdiction when the contempt order was not ancillary to a prior order, but was the entire relief sought in the action and was subject to statutory authority. *See Las Vegas Police Prot. Ass’n Metro, Inc. v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark*, 122 Nev. 230, 237, 130 P.3d 182 (2006) (“In *Pengilly*, we concluded that a contempt order arising from within an underlying district court action is not

appealable but challengeable only through a writ petition. But in this case, the district court's order was not ancillary to any other district court action; rather, the citizen review board applied for relief directly under NRS 289.390(2), which governs enforcement actions.”)

None of the exceptions are applicable here. Appellants have appealed an order of contempt following their failure to abide by previous orders in the case. There is no other independently appealable order included as part of this Appeal.¹ The contempt statute, NRS 22, under which the Lytle Trust was sanctioned, does not grant an appeal right. In short, this Court does not have jurisdiction to decide the Contempt Order and this Appeal should be dismissed.

B. The Contempt Order is Not a Special Order Entered After Final Judgment.

NRAP 3A(b)(1-8) lists the instances when an appeal may be taken from the judgments and orders of a district court in a civil action. Here, Appellants try to avoid having to file a writ by alleging that their petition falls under “a special order entered after final judgment” pursuant to NRAP 3A(b)(8). However, as *Pengilly* clearly precludes appeal of an order of contempt, the Appellants must demonstrate that the Contempt Order affects their rights arising from the final judgment. *See*

¹ Appellants have separately appealed the award of attorney's fees and costs related to the Contempt Order. Case No. 81689. The Court has previously found that an order awarding attorney fees as a sanction for contempt are not independently appealable. *Goudie v. Packard-Keane*, 406 P.3d 959 (Table), 2017 WL 5956827, *1 (Nev. 2017) (unpublished disposition); *Leavitt v. Abbatangelo*, 404 P.3d 411 (Table), 2017 WL 4950058, *1 (Nev. 2017) (unpublished disposition).

Saiter v. Saiter, 416 P.3d 1056 (Table) 2018 WL 2096288, *1 (Nev. 2018) (unpublished disposition) (appeal was dismissed because appellant failed to show how the order affected his rights arising from the final judgment).

In *Gumm v. Mainor*, 118 Nev. 912, 913–14, 59 P.3d 1220, 1221 (2002), the Court stated the standard: “[T]o be appealable ... a special order made after final judgment must be an order affecting the rights of some party to the action, growing out of the judgment previously entered.” The Contempt Order did not change any rights, but only enforced the prior order which has already been appealed and affirmed by this Court. There is a difference between orders enforcing a judgment (i.e. contempt orders subject to the *Pengilly* rule), which by their nature do not change the rights given in the judgment, and orders affecting (read: changing or altering) the rights of the parties previously established in the case. In *Gumm*, “The district court’s order deprived *Gumm* of part of his judgment and distributed that money to others who claimed a right to it.” 118 Nev. at 919, 59 P.3d at 1225. Here, the Contempt Order only enforced the rights and obligations of the parties previously set in the May 2018 Order, and did not affect, change, or alter the rights of any party. Thus, the Contempt Order does not “affect the rights of some party to the action” for purposes of NRAP 3A(b)(8) under the standard stated in *Gumm*. See also *Detwiler*, 2020 WL 2214148, *2 (order awarding attorney fees as a sanction unrelated to the judgment between the parties did not qualify as a special

order appealable under NRAP 3A(b)(8)); *Brazell v. Brazell*, 393 P.3d 1075 (Table), 2017 WL 1855087 *1 (May 2017) (unpublished disposition) (order of contempt was a mere enforcement of appellant's obligations under the divorce decree and did not qualify as a special order appealable under NRAP 3A(b)(8)).

IV. Conclusion

Thus, the Contempt Order is not appealable under the clear language of *Pengilly*, and does not otherwise qualify as a special order appealable under NRAP 3A(b)(8). The Court does not have jurisdiction. The proper avenue for review is a writ petition under NRS 34. Accordingly, this Appeal should be dismissed.

DATED this 29th day of October 2020.

CHRISTENSEN JAMES & MARTIN

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CERTIFICATE OF SERVICE

I hereby certify that on this date, the 29th day of October 2020, I submitted the foregoing RESPONDENTS' MOTION TO DISMISS for filing and service through the Court's eFlex electronic filing service. According to the system, electronic notification will automatically be sent to the following:

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49

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Case No. 81390

In the Supreme Court of Nevada

Electronically Filed
Nov 30 2020 08:12 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

Appellants,

vs.

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

Respondents.

APPELLANTS' OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

Appellants Trudi Lytle and John Lytle, Trustees of the Lytle Trust, oppose the motion to dismiss this appeal. The Lytles are prepared to contest the subject order holding them in contempt via writ petition if necessary. To be prudent, however, they pursue this appeal first because the order holding them in contempt appears to fall within

a jurisdictional gray area. While the contempt order purports merely to enforce a judgment granting injunctive relief, the Lytles contend the district court effectively altered the terms of the underlying injunction in order to find they violated it. Thus, should this Court agree with appellants' interpretation of the contempt order and the injunction the Lytles allegedly violated, those conclusions would render the contempt order appealable.

I.

APPLICABLE LAW

If an order holding a party in contempt also affects the judgment rights or liabilities of a party to the action, the order may be appealable under NRAP 3A(b)(8).

A. A Contempt Order that Affects the Rights of a Party to the Action Growing Out of a Judgment is Appealable

Appellants recognize that simple contempt orders generally are not appealable and instead must be contested via writ petition.

Pengilly v. Rancho Santa Fe Homeowners Ass'n, 116 Nev. 646, 649, 5 P.3d 569, 571 (2000).

As respondents acknowledge, however, an appeal will lie from a contempt order if it “affect[s] the rights of some party to the action,

growing out of the judgment previously entered.” *See Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002) (citing NRAP 3A(b)(8)); *Vaile v. Vaile*, 133 Nev. 213, 217, 396 P.3d 791, 794-95 (2017) (“if the contempt finding or sanction is included in an order that is otherwise independently appealable, this court has jurisdiction to hear the contempt challenge on appeal”); *c.f.*, *Detwiler v. Baker Boyer Nat’l Bank*, 2020 WL 2214148, *2, 462 P.3d 254 (Nev. 2020) (contempt order was not appealable because it “[did] not affect the judgment rights or liabilities of a party to the action”); *Saiter v. Saiter*, 2018 WL 2096288, 416 P.3d 1056 (2018) (dismissing appeal from order of contempt where appellant “d[id] not demonstrate that the order affect[ed] his rights arising from the final judgment (the divorce decree)”).

B. This Court Generally Looks to Substance over Form

In assessing appellate jurisdiction, this Court frequently looks beyond labels and examines the gravamen and effect of subject orders and other operative documents. For example, in *Gumm v. Mainor*, the Court permitted an appeal from a post-judgment order that, on its face, merely “distributed funds” because it substantively “affected plaintiff’s right to distribution of judgment proceeds.” *Id.* Regardless of the

appealed order's title, this Court reasoned that "the order [was] analogous to orders adjudicating attorney liens and awarding attorney fees and costs," which are appealable. *Id.*, 118 Nev. at 919, 59 P.3d at 1225. Similarly, the Court has examined the contents of post-judgment motions to determine whether to deem them tolling "regardless of label." *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585, 245 P.3d 1190, 1195 (2010).

**C. Where an Order May be Appealable, Prudence
Requires the Aggrieved Party to Initiate an Appeal**

If appellants were to forego an appeal from the underlying order because it ostensibly is a simple contempt order and file a writ petition instead, and this Court were to determine the order is substantively appealable, this Court likely would deny the writ petition on the basis that the order is appealable. *See Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004) (applying NRS 34.170). In that event, it would be too late to pursue an appeal. *Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987) ("the proper and timely filing of a notice of appeal is jurisdictional"). On the other hand, a petition for extraordinary relief is not subject to a jurisdictional deadline although the doctrine of laches applies. *Moseley v. Eighth*

Judicial Dist. Court, 124 Nev. 654, 659 n. 6, 188 P.3d 1136, 1140 n. 6 (2008) (concluding laches did not bar consideration of a writ petition filed four months after contested order); *Widdis v. Second Judicial Dist. Court*, 114 Nev. 1224, 1227–28, 968 P.2d 1165, 1167 (1998) (concluding that laches did not bar consideration of a writ petition filed seven months after the district court entered its written order).

Were the contempt order to be deemed appealable, appellants also would risk it having issue-preclusive effect by foregoing any appeal. *See Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008), *holding modified by Weddell v. Sharp*, 131 Nev. 233, 350 P.3d 80 (2015) (“the following factors are necessary for application of issue preclusion: “(1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; ... (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation”; and (4) the issue was actually and necessarily litigated”).

II.
APPELLANTS CONTEND THE SUBJECT ORDER
HOLDING THEM IN CONTEMPT EFFECTIVELY AMENDS
THE INJUNCTION THEY PURPORTEDLY VIOLATED

In this case, the Lytles appeal from a recent order holding them in contempt of court ostensibly for violating a judgment entered on May 24, 2018, which granted respondents permanent injunctive relief (“May 2018 injunction”). And respondents’ motion to dismiss is premised on the assumption that the contempt order did not, in fact, expand or otherwise alter the parties’ rights under the May 2018 injunction:

The Contempt Order did not change any rights, but only enforced the prior order which has already been appealed and affirmed by this Court. There is a difference between orders enforcing a judgment (i.e., contempt orders subject to the *Pengilly* rule), which by their nature do not change the rights given in the judgment, and orders affecting (read: changing altering) the rights of the parties previously established the case in the case. * * * Here, the Contempt Order only enforced the rights and obligations of the parties set in the May 2018 Order, and did not affect, change, or alter the rights of any party.

(Respondents’ Motion to Dismiss, at 8.) Appellants disagree, however, with the district court’s and respondents’ interpretation of the May 2018 injunction and the scope of actions it enjoined.

Proper interpretation of the May 2018 injunction is the crux of the issue presented in this appeal. As the Lytles will demonstrate in their opening brief, the May 2018 injunction arose from an action to quiet title. The Lytles had obtained three judgments against a property owners' association (the Rosemere Estate Property Owners' Association) that includes their property and those of respondents. The Lytles then filed liens against respondents' homes to collect on their judgments against the association. Respondents initiated suit to quiet the titles of their properties and enjoin the Lytles from collecting their judgments against the association from them individually, based primarily on the argument that the association was a limited-purpose association and its members not parties in the Lytles' suits against the association. The district court (THE HONORABLE TIMOTHY WILLIAMS) expunged the liens and permanently enjoined the Lytles from collecting their judgments or taking further action "directly against the [respondents] or their properties":

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust is permanently enjoined from recording and enforcing the [three judgments], or any other judgments obtained against the Association, against the September Property,

Zobrist Property, Sandoval Property or Gegen Property.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust is permanently enjoined from taking any action in the future directly against the Plaintiffs or their properties based upon the [three lawsuits giving rise to the three judgments].

(See “Order Granting Motion for Summary Judgment or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary Judgment,” entered May 24, 2018 (attached as Exhibit “1”), at 10:5.) This Court upheld the May 2018 injunction in Case Nos. 76198 and 77007. (Doc. # 20-08333.)

Following remand, the Lytles commenced a new action for appointment of a receiver over the judgment-debtor association to, among other things, satisfy the judgments¹ (“receivership action”), because the association’s officers had resigned and allowed it to become defunct after the Lytles obtained their judgments. This appeal stems from a subsequent order by Judge Williams on May 22, 2020, holding

¹ See *Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust v. Rosemere Estates Property Owners’ Association*, Eighth Judicial District Court, case no. A-18-775843-C, pending before THE HONORABLE JOANNA S. KISHNER.

the Lytles in contempt of the May 2018 injunction for initiating their receivership action against the association, because an indirect *consequence* of the receivership action might be the association imposing an assessment against its members, including the respondents. (See appellants' docketing statement, Doc. 2020-28913.) Put simply, where the May 2018 injunction enjoined the Lytles from executing their judgments directly against the association's members' properties *because they had not been parties* to the lawsuit between the Lytles and the association, the subject contempt order effectively expands that injunction to include any action against the judgment-debtor association if that would lead the association to exercise whatever rights it may have under the law and relevant agreements to procure funds from the respondents.²

Thus, the Lytles do not merely contend that the contempt order was an abuse of discretion, unfairly penalizing them for an action that did not violate the May 2018 injunction. They also appeal from the contempt order's *effective expansion* of the May 2018 injunction, which

² The association is not a party to this action.

may have issue-preclusive effect on the receivership action. The situation is analogous to a party who procures a judgment against a corporation, is enjoined from executing on that judgment against the corporation's shareholders because they are not judgment-debtors individually, and then is precluded from executing the judgment even against the judgment-debtor corporation itself merely because that may lead the corporation to exercise its right to issue a capital call against the shareholders. Such an expansion would be both an unfair application of the original injunction and effectively a new injunction, prohibiting execution against a different party.

CONCLUSION

It would be premature to dismiss this appeal before consideration of the briefing on the merits. Appellants contend the subject contempt order effectively amends the May 2018 injunction to add the association as a beneficiary, rendering it appealable as "a special order entered after final judgment." NRAP 3A(b)(8). Respondents disagree with that description of the contempt order. But this Court should not dismiss the appeal based on a prejudgment that respondent's characterization

of the allegedly violated May 2018 injunction is correct, especially where the crux of the appeal is a dispute about that characterization.

Dated this 30th day of November, 2020.

LEWIS ROCA ROTHGERBER LLP

BY: /s/ Joel D. Henriod
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
3993 Howard Hughes Parkway,
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Attorneys for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 30, 2020, I submitted the foregoing “**APPELLANTS’ OPPOSITION TO RESPONDENTS’ MOTION TO DISMISS**” for filing via the Court’s eFlex electronic filing system.

Electronic notification will be sent to the following:

CHRISTENSEN JAMES & MARTIN
WESLEY J. SMITH
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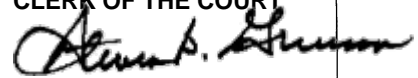
Attorneys for Respondents

/s/ Cynthia Kelley
An Employee of Lewis Roca Rothgerber LLP

001649

EXHIBIT 1

EXHIBIT 1



ORDR
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*Attorneys for September Trust, Zobrist Trust, Sandoval Trust
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

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

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

AND ALL RELATED COUNTERCLAIMS
AND CROSS-CLAIMS

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

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

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

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

5 Plaintiffs,

6 vs.

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

11 Defendants.

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

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

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

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

8
9 **FINDINGS OF FACT**

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

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

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

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

24 5. The Plaintiffs’ Properties are located in the Rosemere Estates subdivision
25 (“Rosemere Subdivision” or “Subdivision”) and are subject to the CC&R’s recorded January 4,
26 1994 (the “CC&Rs”).
27
28

1 6. John Allen Lytle and Trudi Lee Lytle are the Trustees of the Lytle Trust
2 (collectively "Lytle Trust") which owns that certain residential property known as parcel number
3 163-03-313-009 (the "Lytle Property"), also located in the Rosemere Subdivision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 24. On February 24, 2017, the Boulden Trust, owner of Parcel No. 163-03-313-008 in
23 the Rosemere Subdivision, and the Lamothe Trust, owner of Parcel No. 163-03-313-002 in the
24 Rosemere Subdivision, filed a Motion for Partial Summary Judgment in this Court in this Case,
25 Case No. A-16-747900-C.
26
27
28

1 25. This Court granted the Boulden Trust's and Lamothe Trust's Motion for Partial
2 Summary Judgment, and on July 25, 2017, entered its Order Granting Motion to Alter or Amend
3 Findings of Fact and Conclusions of Law ("Order").

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

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

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

16 **CONCLUSIONS OF LAW**

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

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

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

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

///

ORDER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 ///

23 ///

24 ///

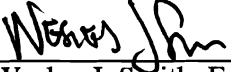
1 **IT IS SO ORDERED.**

2
3 Dated this ____ day of May, 2018.

4
5 _____
DISTRICT COURT JUDGE

6 Submitted by:

7
8 **CHRISTENSEN JAMES & MARTIN**

9 

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10 Nevada Bar No. 11871

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17 Dennis & Julie Gegen

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26 Claimants Robert & Yvonne Disman

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Las Vegas, Nevada 89144

Attorneys for Defendants/Counter-

Claimants Lytle Trust

1 **IT IS SO ORDERED.**

2
3 Dated this ____ day of May, 2018.

4
5
6 _____
DISTRICT COURT JUDGE

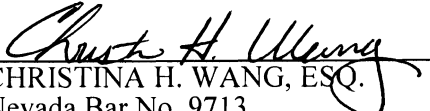
7 Submitted by:

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and Lamothe Trust

1 **IT IS SO ORDERED.**

2
3 Dated this 22 day of May, 2018.

4
5 _____
DISTRICT COURT JUDGE

6 Submitted by:

L. R.

7
8 **CHRISTENSEN JAMES & MARTIN**

9 _____
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17 Zobrist Trust, Sandoval Trust, and
18 Dennis & Julie Gegen

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and Lamothe Trust

1 **IT IS SO ORDERED.**

2
3 Dated this 28 day of May, 2018.

4
5 
6 DISTRICT COURT JUDGE

7 Submitted by:

8 **CHRISTENSEN JAMES & MARTIN**

9
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50

50

No. 81390

Electronically Filed
Dec 07 2020 03:39 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

vs.

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

On Appeal from an Order of the Eighth Judicial District Court, Clark
County, Nevada; The Honorable Timothy C. Williams, District Court Judge;
District Court Case No. A-17-765372-C

REPLY TO APPELLANTS' OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

Wesley J. Smith, Esq. (Nevada Bar No. 11871)
Laura J. Wolff, Esq. (Nevada Bar No. 6869)
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Attorneys for Respondents

REPLY TO APPELLANTS' OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

Appellants' are "prepared to contest the subject order holding them in contempt via writ petition if necessary." Opposition at 1. As explained in the Motion, this Court has held on numerous occasions that a writ petition is the appropriate procedural mechanism for review of an order of contempt. Whereas the Lytle Trust is ready, willing, and able to present this matter through a writ petition, the Court should grant the Motion to Dismiss. However, the Lytle Trust argues that the Contempt Order is appealable because it changed the legal rights of the parties. The Contempt Order did no such thing and a writ petition is the only appropriate avenue for review of this order of contempt.

A. The Motion to Dismiss Should be Decided Prior to Merits Briefing

This Motion may be decided upon a jurisdictional review of the Docketing Statement, no merits briefing is necessary. This Court has decided jurisdictional issues prior to merits briefing. For example, in *Pengilly v. Rancho Santa Fe Homeowners Ass'n*, where this Court stated it does not have jurisdiction over an appeal from a contempt order and that proper mode of review is by original writ petition, the Court decided the issue based on briefing in response to an order to show cause. 116 Nev. 646, 647, 5 P.3d 569, 570 (2000). Further, in *Gumm v. Mainor*, 118 Nev. 912, 59 P.3d 1220 (2002), in which the Court clarified what qualifies as a "special order made after final judgment" and upon which the

Appellant's rely, the Court stayed briefing pending its jurisdictional review. *See* Docket in *Gumm v. Mainor*, No. 38424, Order entered Feb. 11, 2002 ("We suspend the briefing schedule and preparation of transcripts pending further order of this court...pending completion of our jurisdictional review..."). The Docketing Statement includes all necessary documents for this Court to make a jurisdictional review, including the Contempt Order, Clarification Order, and May 2018 Order. Briefing on this Motion to Dismiss is sufficient to decide this threshold jurisdictional question and there is no need for further briefing on the matter.

B. The Contempt Order is not an Expansion of the May 2018 Order

The Contempt Order did not expand the permanent injunction. The Lytle Trust cleverly attempted to skirt the district court's orders when it sought special assessments through a receiver. Just because the Lytle Trust's interpretations turned out to be incorrect does not mean that the court expanded its orders or changed the parties' legal rights when it held the Lytle Trust in contempt for those actions. The Clarification Order (Ex. B) explains that the May 2018 Order, and the Contempt Order enforcing it, are based on the history of the case and previous court orders, including a similar injunction issued in April 2017 in favor of other similarly situated property owners. The Clarification Order explains:

5. The thrust and focus of all the Court's decisions in this matter are based upon the history of this case, including the April 2017 Order entered 3 years ago.

6. The April 2017 Order stating Defendants are permanently enjoined from taking “any action” in the future against the Plaintiffs or their properties based upon the Rosemere LPA Litigation was also clear.

7. The broad and the plain meaning of the term “any action” means any action, whether direct or indirect.

Clarification Order, Exhibit B to Docketing Statement, 6:21-27. Other language in the Clarification Order emphasizes the court’s intent to enforce its prior orders, not change the rights of the parties. *See id.* at 7:1-11.¹ The Contempt Order did not expand or changes rights because the Court had already prohibited direct *and* indirect attempts to collect the judgments from the Respondents.

C. The Main Purpose of the Receivership Action Was to Have the Association Make Special Assessments Against The Property Owners.

The Lytle Trust argues that imposing assessments on the Respondents was merely an “indirect consequence” of the receivership action. However, collection of assessments to pay the Judgments was the driving force behind the Lytle Trust’s application. The May 2018 Order clearly concluded that: the Association is a “limited purpose association” as referenced in NRS 116.1201(2); the original CC&Rs govern because the Amended CC&Rs were void ab initio; and the judgments against the Association are not an obligation or debt of the Respondents. May 2018 Order, Ex. G to Docketing Statement, at 7-8. Neither the CC&Rs nor

¹ Those Orders were affirmed by this Court following appeals by the Lytle Trust. *See Lytle v. Boulden*, No. 73039, 432 P.3d 167 (Table), 2018 WL 6433005 (Dec. 4, 2018); *Lytle v. Sept. Tr.*, No. 76198, 458 P.3d 361 (Table), 2020 WL 1033050 (Mar. 2, 2020).

the limited statutory powers of NRS 116.1201 grant the Association a power of special assessment.

The Contempt Order merely enforced these aspects of the May 2018 Order. The Contempt Order found that the Receivership Action was initiated because of “the Association’s refusal to pay the Rosemere Judgments, including its refusal to assess Association members, including the Plaintiffs, so the Association could pay the Rosemere Judgments.” Contempt Order, Ex. A to Docketing Statement, p. 7:8-19. The court found further that “The Order Appointing Receiver, drafted by the Lytle Trust, directs the Receiver to ‘[i]ssue and collect a special assessment upon all owners within the Association to satisfy the Lytle Trust’s judgments against the Association’ [and] If an Association member does not pay an assessment then the Receiver may proceed to foreclose on said member’s ownership interest in the property.” *Id.* at 8:17-26 (citation omitted). Special assessments were not merely an indirect consequence of the Receivership Action, they were the intended result.

D. The Corporation Analogy is Not Applicable to this Case.

The Lytle Trust attempts to draw an analogy to enforcement of a judgment against a corporation. However, such an example is too simplistic and overlooks key issues unique to this case, including that the Association is not a typical business entity, but a limited purpose association governed by statute and CC&Rs that do not grant a special assessment power. Most importantly, the Association

was given the power to foreclose on the Respondents' real property (their primary residences), something that a corporation could not do to its shareholders.

CONCLUSION

The Contempt Order is not an expansion of the May 2018 Order. As such, the Contempt Order does not qualify as a special order appealable under NRAP 3A(b)(8). The Court does not have jurisdiction over this appeal. The proper avenue for review is a writ petition under NRS 34. This appeal should be dismissed.

DATED this 7th day of December 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on this date, the 7th day of December 2020, I submitted the foregoing Reply to Appellants' Opposition to Respondents' Motion to Dismiss for filing and service through the Court's eFlex electronic filing service. According to the system, electronic notification will automatically be sent to the following:

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

vs.

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

Respondents.

No. 81390

FILED

JAN 08 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER

This is an appeal from an Order Granting Plaintiffs' Motion for Order to Show Cause Why the Lytle Trust Should Not be Held in Contempt for Violation of Court Orders.

Respondents have filed a motion to dismiss the appeal. However, the determination of the jurisdictional issue appears to be intertwined with the merits of this appeal. Accordingly, the motion is

denied. The parties may raise the jurisdictional issue in their briefs, if deemed warranted.

Appellants' motions requesting second and third extensions of time to file the opening brief are granted. NRAP 31(b)(3)(B). Appellants shall have until February 3, 2021, to file and serve the opening brief and appendix. No further extensions of time shall be permitted absent demonstration of extraordinary circumstances and extreme need. *Id.* Counsel's caseload normally will not be deemed such a circumstance. *Cf. Varnum v. Grady*, 90 Nev. 374, 528 P.2d 1027 (1974). Failure to timely file the opening brief and appendix may result in the imposition of sanctions, including the dismissal of this appeal. NRAP 31(d).

It is so ORDERED.

1. J. J. J., C.J.

cc: Lewis Roca Rothgerber Christie LLP/Las Vegas
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Christensen James & Martin

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Case No. 81390

In the Supreme Court of Nevada

TRUDI LEE LYTLE; and JOHN ALLEN LYTLE, as
trustees of THE LYTLE TRUST,

Appellants,

vs.

SEPTEMBER TRUST, DATED MARCH 23, 1972;
GERRY R. ZOBRIST AND JOLIN G. ZOBRIST, as
trustees of the GERRY R. ZOBRIST AND JOLIN
G. ZOBRIST FAMILY TRUST; RAYNALDO G.
SANDOVAL AND JULIE MARIE SANDOVAL
GEGEN, as Trustees of the RAYNALDO G. AND
EVELYN A. SANDOVAL JOINT LIVING AND
DEVOLUTION TRUST DATED MAY 27, 1992;
DENNIS A. GEGEN AND JULIE S. GEGEN,
Husband and wife, as joint tenants; ROBERT
Z. DISMAN; and YVONNE A. DISMAN,

Respondents.

Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

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

APPELLANTS' OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certify that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal:

Appellants Trudi Lee Lytle and John Allen Lytle, trustees of the Lytle Trust, are individuals.

Richard E. Haskin and Timothy P. Elson at Gibbs Giden Locher Turner Senet & Wittbrodt LLP represented the Lytle Trust in the district court. Joel D. Henriod, Daniel F. Polsenberg, and Dan R. Waite at Lewis Roca Rothgerber Christie LLP represent the Lytle Trust in the district court and before this Court.

Dated this 15th day of March, 2021.

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JURISDICTION

Trudi Lee Lytle and John Allen Lytle, as trustees of The Lytle Trust (“Lyttles” or “the Lytle Trust”), appeal from an order holding the trust in contempt for purportedly violating a May 2018 injunction order, and awarding respondents penalties and expenses. (7 App. 1562.)

Notice of entry of the contempt order was served on May 22, 2020, and the Lytle Trust timely appealed on Monday, June 22, 2020. (6 App. 1470.) Appellants then amended the appeal on July 31, 2020, to include an order ruling on a subsequent motion for clarification that was entered on July 15, 2020. (7 App. 1562.)

Appellants recognize that simple contempt orders generally are not appealable and instead must be contested via writ petition.

Pengilly v. Rancho Santa Fe Homeowners Ass’n, 116 Nev. 646, 649, 5 P.3d 569, 571 (2000). An appeal will lie from a contempt order, however, if it “affect[s] the rights of some party to the action, growing out of the judgment previously entered.” *See Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002) (citing NRAP 3A(b)(8)); *Vaile v. Vaile*, 133 Nev. 213, 217, 396 P.3d 791, 794-95 (2017) (“if the contempt finding or sanction is included in an order that is otherwise

independently appealable, this court has jurisdiction to hear the contempt challenge on appeal”); *c.f.*, *Detwiler v. Baker Boyer Nat'l Bank*, 2020 WL 2214148, *2, 462 P.3d 254 (Nev. 2020) (contempt order was not appealable because it “[did] not affect the judgment rights or liabilities of a party to the action”); *Saiter v. Saiter*, 2018 WL 2096288, 416 P.3d 1056 (2018) (dismissing appeal from order of contempt where appellant “d[id] not demonstrate that the order affect[ed] his rights arising from the final judgment (the divorce decree)”).

Here, appellants contend the subject contempt order effectively amends the May 2018 injunction order to expand significantly the scope of activity enjoined and add a beneficiary. If this Court agrees with appellants’ assessment,¹ the subject contempt order is appealable,

¹ In assessing appellate jurisdiction, this Court frequently looks beyond labels and examines the gravamen and effect of subject orders and other operative documents. For example, in *Gumm v. Mainor*, the Court permitted an appeal from a post-judgment order that, on its face, merely “distributed funds” because it substantively “affected plaintiff’s right to distribution of judgment proceeds.” *Id.* Regardless of the appealed order’s title, this Court reasoned that “the order [was] analogous to orders adjudicating attorney liens and awarding attorney fees and costs,” which are appealable. *Id.*, 118 Nev. at 919, 59 P.3d at 1225. Similarly, the Court has examined the contents of post-judgment motions to determine whether to deem them tolling “regardless of label.” *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585,

either as “a special order” entered after the final May 2018 injunction order, pursuant to NRAP 3A(b)(8), or as an order granting new injunctive relief, pursuant to NRAP 3A(b)(3).² Determination of

245 P.3d 1190, 1195 (2010).

²The Lytle Trust is prepared to contest the subject order holding them in contempt via writ petition if necessary. Where an order may be appealable, prudence calls for the aggrieved party to initiate an appeal. If appellants were to forego an appeal from the underlying order because it ostensibly is a simple contempt order and file a writ petition instead, and this Court were to determine the order is substantively appealable, this Court likely would deny the writ petition on the basis that the order is appealable. *See Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004) (applying NRS 34.170). In that event, it would be too late to pursue an appeal. *Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987) (“the proper and timely filing of a notice of appeal is jurisdictional”). On the other hand, a petition for extraordinary relief is not subject to a jurisdictional deadline although the doctrine of laches applies. *Moseley v. Eighth Judicial Dist. Ct.*, 124 Nev. 654, 659 n. 6, 188 P.3d 1136, 1140 n. 6 (2008) (concluding laches did not bar consideration of a writ petition filed four months after contested order); *Widdis v. Second Jud. Dist. Ct.*, 114 Nev. 1224, 1227–28, 968 P.2d 1165, 1167 (1998) (concluding that laches did not bar consideration of a writ petition filed seven months after the district court entered its written order).

Were the contempt order to be deemed appealable, appellants also would risk it having issue-preclusive effect by foregoing any appeal. *See Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008), holding modified by *Weddell v. Sharp*, 131 Nev. 233, 350 P.3d 80 (2015) (“the following factors are necessary for application of issue preclusion: “(1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; ... (3) the party against whom the judgment is asserted must have been a party or in privity

appellate jurisdiction, therefore, is intertwined with the merits of this appeal, as the Court observed previously in denying respondents' motion to dismiss. (Doc. no. 21-00620.)

ROUTING STATEMENT

This case is presumptively assigned to the Court of Appeals under NRAP 17(b)(7), but appellants contend that the Supreme Court should retain the case due to its institutional familiarity with the issues and several related cases involving these parties.

ISSUE PRESENTED

1. Where a judgment was entered against a nonprofit corporate entity—here a common-interest community—and the judgment creditor was enjoined from enforcing the judgment “directly” against the corporation’s members (*i.e.*, the property owners) because they are “not parties” to the judgment, should that injunction be construed to preclude enforcement even against the judgment-debtor corporation, including seeking the appointment of a receiver over the judgment-

with a party to the prior litigation”; and (4) the issue was actually and necessarily litigated”).

debtor corporation, simply because it may lead the judgment-debtor corporation to seek funds from its members to satisfy the judgment?

STATEMENT OF THE CASE

This is an appeal an order holding appellants in contempt of court for allegedly violating an injunction, entered on May 22, 2020 by THE HONORABLE TIMOTHY WILLIAMS. Appellants maintain the district court substantively expanded the scope of the activity enjoined by the injunction order and then determined that appellants had violated it *ex post facto*. The district court's order also expands the scope of activity enjoined prospectively.

STATEMENT OF FACTS

Defendant-Appellants TRUDI LEE LYTLE and JOHN ALLEN LYTLE, as trustees of THE LYTLE TRUST ("Lyttles" or "the Lytle Trust") own a lot in a residential subdivision governed by the nonprofit corporation ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION (the "Rosemere Association" or "Association"). The Association consists of nine lot owners. Plaintiff-respondents are four other property owners who also are members of the Association ("Property Owners").³

³ The plaintiff-respondents are (1) SEPTEMBER TRUST, DATED MARCH 23, 1972; (2) GERRY R. ZOBRIST and JOLIN G. ZOBRIST, as trustees of the GERRY R. ZOBRIST AND JOLIN G. ZOBRIST FAMILY TRUST; (3) RAYNALDO G.

***The Lytle Trust Procures Judgments
Against the Rosemere Association***

Through the Association, the Lytles' neighboring property owners waged vicious battles with them for more than a decade ("Rosemere Litigation"), resulting in entry of three judgments in favor of the Lytle Trust against the Association ("Rosemere Judgments"), which have a current combined balance of more than \$1.8 million. (1 App. 206, 3 App. 540, 3 App. 550.) The Association's actions against them was so outrageous that the Lytle Trust's judgments include a punitive damage award in excess of \$800,000. (3 App. 512.)

These judgments, the last of which was entered in 2017, have never been reversed or otherwise invalidated.

SANDOVAL and JULIE MARIE SANDOVAL GEGEN, as Trustees of the RAYNALDO G. AND EVELYN A. SANDOVAL JOINT LIVING AND DEVOLUTION TRUST DATED MAY 27, 1992; and (4) DENNIS A. GEGEN and JULIE S. GEGEN.

***The Lytle Trust is Enjoined from Enforcing
the Judgments “Directly” Against
the Association’s Members***

Although its judgments were against the “Rosemere Estates Property Owners Association,” the Lytle Trust recorded abstracts of the judgment directly against all properties in the association aside from their own. (1 App. 206.) In various suits, consolidated in front of Judge Timothy C. Williams, some of the property owners sued the Lytle Trust seeking declaratory and injunctive relief to restrain the Lytle Trust from foreclosing on their properties, and to strike the abstracts of judgment clouding their titles. (4 App. 896.) The district court granted that relief in multiple orders, which were appealed and affirmed. (See Case nos. 73039 and 76198.) The district court also awarded fees to the various property owners arising from the injunction actions, which orders also were appealed and affirmed.⁴ (Case nos. 77007 and 79753.)

The basis for the district court’s permanent injunction in favor of the respondent Property Owners, entered on May 24, 2018 (“May 2018

⁴ The district court recently entered an award of fees to these respondent Property Owners, which is the subject of another pending appeal, case no. 81689.

Order”), was twofold. First, the respondents were “not parties” in the Rosemere Litigation. (3 App. 709:1-4.) The judgment debtor is the Association, not the respondent Property Owners. (3 App. 710:5-9.) Second, the court concluded that the Association is not the kind of homeowners’ association (common-interest community) that is subject to NRS 116.3117, which allows judgment creditors of an association to record abstracts of judgments directly against all association homeowners’ properties. (3 App. 709:20-24.) In other words, NRS 116.3117’s *exception to the general rule* that judgment creditors cannot execute against non-parties (outside the strictures of court-sanctioned collection procedures such as garnishment, *etc.*), did not apply.

Accordingly, the district court’s May 2018 Order permanently enjoined the Lytle Trust from recording or enforcing its judgments directly against the non-party Property Owners:

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

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

(3 App. 712:10 (emphasis added).)

The district court never enjoined the Lytle Trust from enforcing its judgments against the judgment-debtor Association or otherwise restricted its right to collect the judgments lawfully. (*Id.*) Indeed, the Association is not even a party below. Nor, importantly, did the district court alleviate the respondent Property Owners of any duties they might owe *to the Association* to enable the Association to satisfy *its* debts under ordinary corporate, contract or statutory principles. (*Id.*)

This Court affirmed the district court’s permanent injunction—as well as injunctions entered on behalf of other similarly situated Rosemere property owners—on the grounds that Property Owners were not parties to the Rosemere Judgments and that NRS 116.3117 does not apply to this association.⁵

⁵ As this Court articulated the basis for the injunctive relief and affirmance:

...under the plain language of Chapter 116, limited purpose

***Executing Against the Defunct Association,
the Lytle Trust Petitions for Appointment of a Receiver***

After the district court permanently enjoined the Lytle Trust from enforcing the judgments directly against the non-party Property Owners—chiding them for disregarding the Association’s corporate form and status as an independent entity—the Lytle Trust focused its collection efforts on the actual judgment-debtor Association. Because the Association’s officers had resigned and allowed the Association to become defunct after the Lytle Trust obtained their judgments,⁶ the Lytle Trust commenced an action for appointment of a receiver to,

association are not subject to Chapter 116 outside of certain express statutory exceptions, and ... NRS 116.3117 is not among those exceptions . . . [nor does] other Nevada law . . . allow them to record abstracts of judgment against homeowners who were not parties to the litigation against Rosemere and whose properties were not the subject of any lawsuit.

See March 2, 2020 “Order of Affirmance,” Doc. # 20-08333, at 3-4 (4 App. 836-37).

⁶ The Association funded its litigation expenses against the Lytle Trust through assessments imposed against and personal loans borrowed from the homeowners. (4 App. 846.) However, when the judgments started rolling-in in favor of the Lytle Trust against the Association, the board members (some of these very Plaintiffs-Respondents) resigned and rendered the Association defunct, failing to renew its status with the Nevada Real Estate Division or the Nevada Secretary of State. (4 App. 846.)

among other things, satisfy the judgments: *Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust v. Rosemere Estates Property Owners' Association*, Eighth Judicial District Court, case no. A-18-775843-C, pending before THE HONORABLE JOANNA S. KISHNER (“receivership action”).

To ensure the receiver would be empowered to act on behalf of the Association with whatever authority a duly appointed executive of the Association otherwise would have, the petition moved the district court to authorize the receiver with broad powers. (4 App. 816.) The Lytle Trust envisioned that such powers might even include the Association issuing assessments to satisfy its debts and judgment obligations, as well as placing liens on properties of Association members who did not pay any lawful assessments. (See 4 App. 820.) The Lytles were aware of the Association having done so in the past. (4 App. 864-69.)

The Property Owners Claim the Lytle Trust Violated the May 2018 Order and Seek to Have them Held in Contempt

Respondent Property Owners reacted to the receivership action by reopening this case, in which Judge Williams had issued the May 2018 Order, and moving Judge Williams to hold the Lytle Trust in contempt

of court for violating it. (3 App. 736.) Although the receiver was appointed over the judgment-debtor Association, to facilitate payment of the Association's debt, the Property Owners argued the receivership petition violated the May 2018 Order *indirectly* because it would lead the Association to exercise its power to issue assessments to the Property Owners. (3 App. 742.)

The Lytle Trust opposed the motion, raising several points. (4 App. 845.) It is commonplace to appoint receivers over non-paying judgment debtors. (5 App. 1120, 1122) The Lytle Trust's effort to enforce the judgment against the Association was correct for the same reason its previous liens directly against the Property Owners had been misguided; the Association is the judgment debtor and an independent corporate entity separate and distinct from its property owner members. (5 App. 1121.) The May 2018 Order did not enjoin the Lytle Trust from lawfully enforcing its judgments against the judgment-debtor Association.⁷ (3 App. 711-12.) And the Property Owners were

⁷ The district court (Honorable Timothy C. Williams) did not issue any of the Lytle Trust's Rosemere Judgments against the Association, and the Association was not a party before Judge Williams.

not somehow immunized from consequences of their Association gathering funds to pay its debt merely because the Lytle Trust had been enjoined from *going around* the Association to lien their properties directly. (5 App. 1125.)

The Court Holds the Lytle Trust in Contempt for Violating the May 2018 Order “Indirectly”

The district court agreed with the Property Owners. (6 App. 1440.) The court did not dispute the legitimacy of the Lytle Trust’s judgments against the Association, which are not stayed. (7 App. 1552.) Nor did the court address merits of whether this limited-purpose homeowners’ association, a nonprofit corporation, would be within its rights to levy assessments to satisfy judgments against it. (7 App. 1559.)

The court’s analysis was simple and straightforward. The court reasoned that “[t]he May 2018 Order’s permanent injunction clearly precluded the Lytle Trust from doing *anything* as it *relates to* enforcing and recording the Rosemere Judgments against the [Property Owners⁸]

⁸ Any conclusion in the Contempt Order that the 2018 Order involved the nominal-respondent Dismans is clear error. The Dismans bought their home from the Boulden Trust after the district court entered its 2017 Order, which is not at issue in this appeal (i.e., the Contempt

or their properties.” (6 App. 1449:24-26] (emphasis added)). The court concluded “the Lytle Trust has no judgment creditor rights to try to collect the Rosemere Judgments from the Plaintiffs or Dismans in *any way, shape, or form.*” (*Id.* at 6 App. 1449:26-27].) As the court further explained in ruling on a motion for clarification, “any” action means “direct or *indirect.*” (7 App. 1557:26].) Thus, even a collection effort against the judgment-debtor Association that “*results in* payment of the Judgments by the Plaintiffs” violates the May 2018 Order. (5 App. 709:10-11 (emphasis added).)

This appeal followed.

SUMMARY OF THE ARGUMENT

The district court abused its discretion by holding the Lytle Trust in contempt for violation of the May 2018 Order. The judgment-creditor

Order does not find a violation of the 2017 Order). Neither the Boulden Trust nor the Dismans are mentioned in the 2018 Order’s permanent injunction. Thus, while, *arguendo*, the Dismans stepped into the shoes of the Boulden Trust as it relates to the 2017 Order, the Dismans are not beneficiaries of the 2018 Order’s permanent injunction. Indeed, the Dismans have no standing here because the Contempt Order specifically found a violation of only the 2018 Order. (6 App. 1451:5-8; *see also*, 7 App. 1557:19-20 (“[t]he Court did not hold the Lytle Trust in contempt for violating the April 2017 Order”).

Lytle Trust had a right to seek appointment of a receiver over the non-paying, corporate debtor. The May 2018 Order had enjoined the Lytle Trust from executing their judgments “directly” against the respondent Property Owners only because they were not parties to the lawsuit between the Lytle Trust and the Association, and the statutory (NRS 116.3117) exception to the rule that judgment liens cannot be recorded against non-party property owners did not apply.⁹ Now, the court effectively has expanded the May 2018 order to enjoin the Lytle Trust from collecting the judgments *even against the Association* if that may lead the Association to exercise whatever rights it may have under the law and relevant agreements to procure funds from the respondent Property Owners, as that would constitute collecting the judgment from them “indirectly.”¹⁰ This improperly disregarded the separate identity between the Association and its members. Forbidding the Lytle Trust from exercising its judgment-creditor right to seek a receiver to enforce the judgment against the judgment-debtor Association was neither

⁹ While the Lytle Trust disagrees with that order and appealed from it, it is law of the case.

¹⁰ The association is not a party to this action.

expressly included in the May 2018 Order nor reasonably implied.

Thus, the district court abused its discretion by attempting to expand the scope of activity enjoined nunc pro tunc and then deeming the Lytle Trust to have violated it ex post facto.

Beyond the impropriety of holding the Lytle Trust in contempt for an expanded order ex post facto, the Lytle Trust also is concerned about the prospective import of the underlying contempt order and the subsequent order on the Lytle Trust's motion for clarification, which could be deemed to operate as an injunction on the Lytle Trust from enforcing its judgment at all against the Association. To the extent the contempt order can be construed to enjoin such activity, the district court both abused its discretion and erred as a matter of law.¹¹ The district court performed no substantive analysis regarding whether this Association, whether by officers or a receiver acting in their shoes, could

¹¹ "This Court reviews the district court's decision to grant a permanent injunction for an abuse of discretion." *Sowers v. Forest Hills Subdivision*, 129 Nev. 99, 108, 294 P.3d 427, 433 (2013). "Purely legal questions surrounding the issuance of an injunction, however, are reviewed de novo." *Id.*

issue assessments to members in order to satisfy its debts under the Association articles or bylaws, or relevant law, etc., before issuing this sweeping injunction. Rather, the district court determined that the Lytle Trust cannot collect its judgments from the Association simply as a consequence of the May 2018 Order that precludes liens “directly” against the Association’s members. The contempt order must be vacated.

ARGUMENT

I.

THE LYTLE TRUST’S REQUEST FOR THE APPOINTMENT OF A RECEIVER OVER THE JUDGMENT DEBTOR ASSOCIATION DID NOT VIOLATE THE MAY 2018 ORDER

The district court abused its discretion¹² by holding the Lytle Trust in contempt for violating the May 2018 Order. Judgment creditors have the right to seek receivership over nonpaying judgment debtors to facilitate payment of a judgment. The May 18 Order does not restrain the Lytle Trust from exercising any lawful execution remedies

¹² *In re Determination of Relative Rts. of Claimants & Appropriators of Waters of Humboldt River Stream Sys. & Tributaries*, 118 Nev. 901, 907, 59 P.3d 1226, 1230 (2002) (“when reviewing a contempt order on a direct appeal, as opposed to considering a writ petition, we will overturn the contempt order only where there has been an abuse of discretion”).

against the judgment-debtor Association, either in the plain language of the order or a clear implication.

A. Judgment Creditors have a Right to Seek Appointment of a Receiver Over a Non-Paying Judgment Debtor

A judgment creditor is not obligated to do anything to collect its judgment against the judgment debtor. To the contrary, “a judgment debtor is under a legal obligation to satisfy the judgment against him.” *See U.S. v. Neidor*, 522 F.2d 916, 919 n.5 (9th Cir. 1975). Thus, a judgment debtor has the affirmative obligation to pay the judgment entered against it—and that obligation exists without demand, execution, garnishment, or any other action by the judgment creditor.

Correlatively, a judgment creditor has a right to collect its judgments and has various tools available to assist collection from a non-paying judgment debtor. One collection tool relevant here is the appointment of a receiver over the non-paying judgment debtor.

Indeed, every Nevada judgment creditor has the right to seek the appointment of a receiver over the judgment debtor: “A receiver may be appointed . . . [a]fter judgment . . . in proceedings in aid of execution . . . or when the judgment debtor refuses to apply the judgment debtor’s

property in satisfaction of the judgment.” NRS 32.010(4). “A receiver may be appointed . . . [i]n all other cases where receivers have heretofore been appointed by the usages of the courts of equity.” NRS 32.010(6). “Since very early days, courts of equity have appointed receivers at the request of judgment creditors when execution has been returned unsatisfied.” *Pittsburgh Equitable Meter Co. v. Paul C. Loeber & Co.*, 160 F.2d 721, 728 (7th Cir. 1947). In short, it is hornbook law that a “receivership may be an appropriate remedy for a judgment creditor.” 12 Alan C. Wright & Arthur R. Miller, *Federal Practice and Procedure* §2983 (3d ed.).

**B. On its Face, the May 2018 Order Does Not Limit the
Lytle Trust’s Right to Pursue the Judgment Debtor**

The plain language of the May 2018 Order does not preclude the Lytle Trust’s collection efforts against the Association. “An order on which a judgment of contempt is based must be clear and unambiguous, and must spell out the details of compliance in clear, specific and unambiguous terms so that the person will readily know exactly what duties or obligations are imposed on him.” *Mack-Manley v. Manley*, 122 Nev. 849, 858, 138 P.3d 525, 532 (2006), *quoting Cunningham v. Eighth*

Jud. Dist. Ct., 102 Nev. 551, 559–60, 729 P.2d 1328, 1333–34 (1986). “A court order which does not specify the compliance details in unambiguous terms cannot form the basis for a subsequent contempt order.” *Div. of Child & Family Servs., Dep't of Human Res., State of Nevada v. Eighth Jud Dist. Ct.*, 120 Nev. 445, 454–55, 92 P.3d 1239, 1245 (2004); *c.f.*, *Bayerische Motoren Werke Aktiengesellschaft v. Roth*, 127 Nev. 122, 132, 252 P.3d 649, 656 (2011) (“A violation of an order granting a motion in limine may only serve as a basis for a new trial when the order is specific in its prohibition and the violation is clear.”).

Permanent injunctions are no different. They too must be strictly construed for purposes of contempt proceedings. *FTC v. Kukendall*, 371 F.3d 745, 760 (10th Cir. 2004) (strictly construing a permanent injunction for purposes of a contempt proceeding). They must be read “intelligently and in context.” DAN B. DOBBS, *LAW OF REMEDIES* § 2.8(7), 220 (2d ed.1993).

Here, the plain language of the May 2018 Order precludes the Lytle Trust from filing liens against properties of *nonparties* without leave of court, or otherwise pursuing them directly. It does not restrict the Lytle Trust’s legal rights to avail itself of all collection remedies

against the judgment-debtor Association. Yet, the district court held the Lytle Trust in contempt for seeking the appointment of a receiver over the Association. The Lytle Trust did not seek appointment of a receiver over the respondents (the respondents were not even parties in the receivership action until they sought to intervene after Judge Kishner granted the receiver). Given the separate identity between the Association and its members, direct action against the Association is not direct action against its members. Thus, although the appointment of a receiver over the Association may indirectly impact the Association's members, it is not direct action against them.

The term “directly” in the May 2018 Order cannot be considered surplusage. “The maxim ‘*expressio unius est exclusio alterius*’, the expression of one thing is the exclusion of another, has been repeatedly confirmed in this State.” *Canarelli v. Eighth Jud. Dist. Ct.*, 136 Nev. Adv. Op. 29, 464 P.3d 114, 121 (2020). Thus, when the May 2018 Order expressly enjoined the Lytle Trust from taking any action “directly against” the respondents or their properties, it indicated the order did not necessarily preclude action that impacted them indirectly. By holding the Lytle Trust in contempt for “initiat[ing] an action against

the Association that included a prayer for appointment of a receiver” and because the Lytle Trust subsequently “applied for appointment of a receiver” over the Association (6 App. 1450:3-4), the district court disregarded the “directly against” term in the May 2018 Order.

C. Precluding the Lytle Trust from Executing its Judgments Against the Association is Not Even a Reasonable Implication of the May 2018 Order

As demonstrated above, the Lytle Trust cannot be deemed in violation of the May 2018 Order because their petition for receivership over the judgment debtor itself did not violate any “unambiguous terms” of the May 2018 Order that “specify the compliance details.” *See Div. of Child & Family Servs.*, 120 Nev. at 454–55, 92 P.3d at 1245.

The Lytle Trust’s actions do not even approach that line, because the May 2018 Order cannot reasonably be construed to imply a restriction on collection efforts against the judgment-debtor Association. To give effect to the intent of the court issuing the injunction, an injunction should be reasonably construed and read as a whole. *Norwest Mortgage, Inc. v. Ozuna*, 706 N.E.2d 984, 989 (Ill. App. 1998). “To ascertain the meaning of any part of an injunction, the entire injunction must be looked to; and its language, like that of all other

instruments, must have a reasonable construction with reference to the subject about which it is employed.” *Old Homestead Bread Co. v. Marx Baking Co.*, 117 P.2d 1007, 1009–10 (Colo. 1941) (internal quotations omitted). In determining whether an action falls within the scope of an injunction one must look to the “injunction itself, read in view of the relief sought and the issues made in the case before the court which rendered it, and the injunction will not be given a wider scope than is warranted by such construction.” *Arbuckle v. Robinson*, 134 So.2d 737, 741 (Miss. 1961). An injunction would not prohibit acts not within its terms as reasonably construed. *Citizens Against Range Expansion v. Idaho Fish and Game Dep’t*, 289 P.3d 32, 37 (Idaho 2012).

1. *The District Court Erroneously Disregarded the Separate Legal Identity of the Association*

The contempt order completely ignores the judgment-debtor Association’s separate legal identity from its members.

**a. THE ASSOCIATION IS A LEGAL ENTITY
SEPARATE AND DISTINCT FROM ITS MEMBERS**

The Association is a corporation, an independent entity under the law. On February 25, 1997, the Association filed its “Non-Profit Articles of Incorporation (Pursuant to NRS 82)” with the Nevada

Secretary of State. (2 App. 391.) The stated purpose is to act as a “homeowners’ association.” *Id.* Thus, while the nature of the Association’s business is a homeowners’ association, the form it chose to conduct that business under is as an NRS 82 nonprofit corporation.

“A basic tenet of American corporate law is that the corporation and its shareholders are distinct entities.” *Dole Food Co. v. Patrickson*, 538 U.S. 468, 474 (2003). Indeed, more than a century ago, this Court acknowledged that “the corporation [as] a separate entity in law is everywhere recognized.” *Marymont v. Nevada State Banking Bd.*, 33 Nev. 333, 111 P. 295, 299 (1910).

The law is no different for nonprofit corporations. “A nonprofit corporation is a legal entity separate from its members.” *Krystkowiak v. W.O. Brisben Companies, Inc.*, 90 P.3d 859, 866-67 (Colo. 2004); accord, e.g., *City Against Rezoning, Inc. v. St. Louis Cty.*, 563 S.W.2d 172, 173 (Mo. App. 1978) (“The not-for-profit corporation is a legal entity separate and apart from the persons who are members of the corporation.”). As one court noted regarding a male member of a nonprofit corporation: “he is not the corporation, and the corporation is

not him.” *The Beverly Foundation v. W.W. Lynch, San Marino, L.P.*, 301 S.W.3d 734, 736 n.1 (Tex. App. 2009).

b. ACTION AGAINST THE ASSOCIATION IS NOT ACTION
AGAINST ITS MEMBERS (OR THEIR PROPERTY)

The judgment-creditor Lytle Trust sought (and obtained) the appointment of a receiver over the non-paying judgment debtor Association in the receivership action before Judge Kishner. Respondents here (intervenor in the receivership action) contended below and in the receivership action that both the mere request for a receiver over the Association and the resulting order appointing receiver procured by the Lytle Trust constituted violations of the district court’s (Judge Williams’s) May 2018 Order because seeking and obtaining a receiver constituted action against respondents and their property. Relevant to this appeal, however, “[a] judgment against a corporation is not a judgment against the shareholders and does not affect their property. . . . [Furthermore,] execution or other [collection] on a corporate judgment does not run against the shareholders or their property.” 1 FLETCHER CYC. CORP. § 38 (Sept. 2020 update).

c. THE DISTRICT COURT ERRED
BY DISREGARDING THE SEPARATE IDENTITY
OF THE ASSOCIATION AND ITS MEMBERS

The contempt order disregards the separate legal identity of the Association. It concludes that “[t]he May 2018 Order’s permanent injunction clearly precluded the Lytle Trust from doing anything as it relates to enforcing and recording the Rosemere Judgments against the Plaintiffs and Dismans or their properties.” (6 App. 1449:24-26). It states “the Lytle Trust has no judgment creditor rights to try to collect the Rosemere Judgments from the Plaintiffs or Dismans in any way, shape, or form.” (*Id.* at 6 App. 1449:26-27.) The court reasoned that any effort by the receiver to pay the Association’s judgments would necessarily impact the respondents since the Association has no source of revenue but from its members, like the respondents. And the court made this clear when its order denying the Lytle Trust’s motion for clarification, stating “*any action* by the Lytle Trust to collect its Judgments against the Association *that results in* payment of the Judgments by the Plaintiffs is a violation of the May 2018 Order.” (7 App. 1558:10-11 (emphasis added).)

The district court erroneously deemed action by the Lytle Trust to collect its judgment from the Association the same as action by the Lytle Trust against the Association's members. This was error. The Association's independent identity cannot be ignored. "The corporate cloak is not lightly thrown aside." *C.f., Baer v. Amos J. Walker, Inc.*, 85 Nev. 219, 220, 452 P.2d 916, 916 (1969) (regarding veil piercing).

d. THE PREJUDICE COULD NOT BE GREATER

The practical effect of the district court's ruling is to void the Lytle Trust's judgments and to strip it of all judgment-creditor rights. Indeed, given the nature of the Association—that it derives all income through member dues and assessments—virtually every action any creditor takes to collect a debt owed by the Association will directly impact the Association's members. Whether it is the Association's electrical bill to keep the entry gate operational, or the water bill to keep the entry and perimeter landscape alive, or the judgments owed by Association to the Lytle Trust, every Association obligation ultimately must be borne by the Association's members—the Association has no other source of revenue.

Yet, the Association and its members are separate and distinct from each other. Even the respondents recognized and relied upon this non-controversial position below.¹³ In short, the district court's May 2018 Order does not preclude any action by the Association vis-à-vis its Property Owner members, nor could it because the Association is not a party below.

2. *The Contempt Order Ignores the Context and Rationale Behind the May 2018 Order*

The separate identity of the Association is not a mere technicality. Here, again, injunction orders must be read “intelligently and in context.” DAN B. DOBBS, LAW OF REMEDIES § 2.8(7). First, the principle reason for the injunction in the May 2018 Order was the independent legal status of the Association, separate from its members. That is the significance of the respondent Property Owners having been nonparties

¹³ 3 App. 594:13-14 (“The difference between the Association and the Plaintiffs [Respondents here] is paramount to this lawsuit.”); *id.* at 3 App. 580:8-9 (“The Plaintiffs are not the Association”); *id.* at 3 App. 585:6-7 (“First and foremost, the Plaintiffs are not the Association”); and *id.* at 3 App. 585:13-14 (“The Plaintiffs are not the Association, it is that simple”).]

to the judgments, even though many of them were the decision makers behind the Association's actions in its litigation against the Lytle Trust.

Second, the May 2018 Order did not alleviate the members from any obligations they might owe *to the Association* should it somehow call on them for funds to satisfy the judgment. That relief was not sought in 2018, and it could not have been given if it had.

Third, the wrong addressed by the May 2018 Order was not that the respondent Property Owners are nonparties to the Rosemere Judgments alone. It was that plus the fact the Lytle Trust had not availed itself of an appropriate legal mechanism to pursue the Property Owners directly. A judgment creditor may pursue assets held by nonparties of a judgment but must do so through legal channels. For example, a judgment creditor may seize assets of a nonparty to a judgment, which the nonparty owes (or may owe) to the judgment creditor *via* writs of garnishments, under NRS 21.120, or by judicial assignment of a judgment-debtor's chose in action (*see Malco v. Gallegos*, 255 P.3d 1287, 127 Nev. 579 (2011)), *etc.* But a judgment

creditor may not pursue the nonparty directly without leave of court or other lawful mechanism.¹⁴

Put simply, there is nothing in the context of the May 2018 Order that would suggest it precludes the Lytle Trust from pursuing the judgment-debtor Association, or that it would serve to forever shelter assets of Association members should the Association issue assessments to facilitate its payment obligation. The respondent Property Owners had no basis in law to assume otherwise.

**D. District Court Revised the 2018 Order in 2020 and
then Held the Lytle Trust in Contempt *Ex Post Facto***

As explained above, the Lytle Trust's petition for appointment of a receiver did not violate the express terms of the May 2018 Order, nor even a necessary implication of it. Instead, the district court effectively expanded the injunction before finding the Lytle Trust violated it.

¹⁴ In 2018, the Lytle Trust believed NRS 116.3117 provided such a lawful mechanism. The district court disagreed and expunged the liens. This Court subsequently affirmed those decisions.

**1. Contempt Cannot Be Based on Ex Post Facto
Application of a Substantively New Directive**

It is hornbook law that “[t]he original decree in a contempt proceeding cannot be amended in order to give it a retroactive or ex post facto effect.” See 51B C.J.S. Labor Relations § 1526; *In re Chiles*, 89 U.S. 157, 169, 22 L. Ed. 819 (1874) (“To make an order now, and then punish for contempt or disregard of it before it was made, is ex post facto legislation and judicial enforcement at the same moment.”); *Grady v. Grady*, 307 N.W.2d 780, 781 (Neb. 1981) (“one cannot be held in contempt of court for acts which became prohibited by a court order entered subsequent to their commission. A contrary ruling would have the effect of an ex post facto law”).

“Even if the decree [can be] amended in the contempt proceedings, such an amendment [can] have no retroactive, or ex post facto, effect so as to reach back and become the predicate upon which to adjudge a litigant in contempt for the disregard of the commands of a decree that had not issued until after the issuance of the rule nisi in the contempt proceedings.” See *Walling v. Crane*, 158 F.2d 80, 84 (5th Cir. 1946); *Maier v. Luce*, 215 P. 399, 401 (Cal. App. 1923) (“An order made nunc pro tunc, including therein requirements different from those expressed

in existing court records, cannot be made the basis of a contempt proceeding until after such changes in the order have been brought to the personal attention of the person thereby affected.”).

2. *The District Court Substantively Modified the 2018 Injunction*

Prohibiting of the Lytle Trust from pursuing the judgment-debtor Association due to its potential “indirect” impact on the nonprofit corporation’s members was a substantive alteration of the May 2018 Order. (*See above.*) “The distinction between modification and clarification is that a clarification ‘does not change the parties’ original relationship, but merely restates that relationship in new terms.’” *See Mikel v. Gourley*, 951 F.2d 166, 169 (8th Cir.1991) ((quoting *Motorola Inc. v. Computer Displays Int’l, Inc.*, 739 F.2d 1149, 1155 (7th Cir.1984))); *Cunningham v. David Special Commitment Ctr.*, 158 F.3d 1035, 1037 (9th Cir. 1998) (recognizing that a modification of an injunction substantially alters the relationship of the parties); *Gon v. First State Ins. Co.*, 871 F.2d 863, 866 (9th Cir. 1989) (recognizing that a modification of an injunction “substantially change[s] the terms and force of the injunction”).

Regardless of what the district court may have intended regarding its May 2018 Order, what it clearly precluded was “any action in the future directly against the Plaintiffs or their properties.” (3 App. 712.) The order also precluded the Lytle Trust “from recording or enforcing [its three judgments] or any other judgments obtained against the Association, against the September Property, Zobrist Property, Sandoval Property or Gegen Property.” (*Id.*) The May 2018 Order defines “Property” as each respondent’s residential lot within the Association.

Seeking the appointment of a receiver over the Association was neither direct action against the Property Owners nor action against their “Property.” Thus, it was reversible error to hold the Lytle Trust in contempt ex post facto for modifications announced in 2020 after the Lytle Trust sought and obtained appointment of a receiver over the Association.

3. The Amendment Also is Time-Barred

While “[c]lerical mistakes in judgments may be corrected by the district court at any time, NRCP 60(a); . . . the district court can substantively alter a judgment only within six months after the

judgment was entered.” *Pickett v. Comanche Constr., Inc.*, 108 Nev. 422, 428, 836 P.2d 42, 45-46 (1992). A substantive alteration is one that is “attributed to the exercise of judicial consideration or discretion.” *Id.* If the district court makes a substantive change after more than six months, the judgment “as corrected [is] void.” *Id.* And that would hold true for an order granting an injunction, which constitutes a “final judgment” regardless of its label. *See* NRCP 54(a) (“‘Judgment’ as used in these rules includes a decree and any order from which an appeal lies”) *and* NRAP 3A(b)(3) (“An appeal may be taken from the following judgments and orders of a district court in a civil action: ... An order granting or refusing to grant an injunction or dissolving or refusing to dissolve an injunction.”).

Here, the district court substantively revised the May 2018 Order when it held the Lytle Trust in contempt and then applied those revisions retroactively. Such became clear when, two months after holding the Lytle Trust in contempt, the district court denied the Lytle Trust’s motion for clarification and stated that the May 2018 Order did not just preclude action taken “directly against” the Respondents, as expressed in the May 2018 Order, but also “indirect” action, though not

expressed in that order, including any action against the Association that “results in payment of the Judgments by the Plaintiffs.” (7 App. 1557:26-27 and 1558:10-11.) Since the district court made this modification in 2020—two years after its May 2018 Order—the order, as modified, is void

II.

THE EXPANDED INJUNCTION IS UNSUSTAINABLE EVEN FOR PROSPECTIVE PURPOSES

Beyond the impropriety of holding the Lytle Trust in contempt for an expanded injunction ex post facto, the Lytle Trust also is concerned about the potential prospective import of the contempt order, which respondents already have contended (in the receivership action) operates to permanently enjoin the Lytle Trust from enforcing its judgment against the Association going forward. As the district court’s recent expansion of the injunction lacks a sound legal basis, it must be vacated.

“This Court reviews the district court’s decision to grant a permanent injunction for an abuse of discretion.” *Sowers v. Forest Hills Subdivision*, 129 Nev. at 108, 294 P.3d at 433. “Purely legal questions

surrounding the issuance of an injunction, however, are reviewed de novo.” *Id.* Such legal questions would include interpretation of the Association articles and other relevant agreements, as well as any application of statutes or case law. *See Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 739, 359 P.3d 105, 106 (2015) (“contract interpretation is a question of law and, as long as no facts are in dispute, this [C]ourt reviews contract issues de novo”); *State, Dep’t of Bus. & Indus., Fin. Institutions Div. v. Nevada Ass’n Servs., Inc.*, 128 Nev. 362, 366, 294 P.3d 1223, 1226 (2012) (this Court reviews de novo “questions of statutory construction, including the meaning and scope of a statute” underling an injunction).

It does not matter, moreover, whether the expansion is deemed an entirely new order or a substantive amendment of the May 2018 Order. While this Court reviews a district court’s order on a motion to alter or amend a judgment for an abuse of discretion, “deference is not owed to legal error.” *J.E. Johns & Assocs. v. Lindberg*, 136 Nev. Adv. Op. 55, 470 P.3d 204, 207 (2020); *AA Primo Builders, LLC*, 126 Nev. at 589, 245 P.3d at 1197.

A. There is No Legal Basis of the Expanded Injunction for this Court to Review De Novo

The court performed no substantive analysis regarding whether this Association could issue assessments to members in order to satisfy its debts, whether by officers or a receiver acting in their shoes. Rather, the district court determined the Lytle Trust cannot petition for receivership of the Association simply as a consequence of the May 2018 Order. That is not hyperbole. To avoid misrepresenting the district court's reasoning, the Lytle Trust filed a motion to clarify after entry of the contempt order to ensure it understood the simplicity of the court's analysis accurately:

This Motion also Presents an Opportunity to the Court to Clarify its Own Record for Appeal

The Lytle Trust and undersigned counsel respect this Court. As we contemplate seeking appellate review of the Contempt Order, we wish to give the Court an opportunity to specify the order's meaning and explain its rationale, to avoid any misconstruction of that order in the Nevada appellate courts.

Put simply, as we construe the Court's ruling and rationale, in light of all the briefing and discussion during the hearing, including a recognition that the Association is not a party here, it appears to us:

(1) The Court acknowledges that legitimate judgments have been entered in favor of the Lytle Trust against the Association, which are not stayed;

(2) The Court understands that where a judgment is entered against a business entity, like the Association, the judgment creditor may execute on the judgment against that judgment debtor entity, just as it could if the judgment debtor were a natural person;

(3) The Court has not ruled that it is impossible for all limited purpose associations, in general, or, more specifically, this limited purpose Association, to levy assessments to satisfy the Association's obligations;

(4) The Court has not ruled that appointment of a receiver over this Association is per se improper;

(5) The Court has not ruled that this Association could never levy assessments to satisfy a judgment against it;

(6) The Court agrees that no statute or case law was presented that shields the Association from imposition of a receiver to satisfy the Association's obligations; but yet

(7) The Court has ruled that the Lytle Trust may not impose on the Association in any manner that eventually might lead to the Association making assessments to satisfy its judgment obligation, which includes banning the Lytle Trust, in its capacity as a judgment creditor, from petitioning for appointment of a receiver over the Association for that purpose; and

(8) The reason the judgment-creditor Lytle Trust may not prompt or encourage the judgment-debtor Association to make assessments to satisfy its

judgment obligation is because the Court had previously barred the Lytle Trust from executing on its judgment *directly* against the Association homeowners.

Respectfully, if we misunderstand, we invite this Court to clarify before we make these representations to the Nevada Supreme Court.

(6 App. 1466-67.)

The district court did not disagree with that interpretation, either during the hearing on the motion for clarification or in its subsequent order. Rather, the order only highlights that the expansion rests on the broad definition of the sweeping term “any” in the May 2018 Order:

...Defendants are permanently enjoined from taking “any action” in the future against the Plaintiffs or their properties based upon the Rosemere LPA Litigation was also clear.

The broad and the plain meaning of the term “any action” means any action, whether direct or indirect.

* * *

. . . Therefore, any action by the Lytle Trust to collect its Judgments against the Association that results in payment of the Judgments by the Plaintiffs is a violation of the May 2018 Order.

(7 App. 1557:23-28, 1558:10-11.)

This Court cannot affirm an injunction that rests on no substantive legal or contractual basis for this Court to review de novo.

State, Dep't of Bus. & Indus., Fin. Institutions Div., 128 Nev. at 366, 294 P.3d at 1226 (this Court reviews de novo “questions of statutory construction, including the meaning and scope of a statute” underling an injunction); *Soro*, 131 Nev. at 739, 359 P.3d at 106 (“contract interpretation is a question of law and, as long as no facts are in dispute, this [C]ourt reviews contract issues de novo”).

Even if the May 2018 Order could substitute for a legal basis, however, it cannot justify the expansion. (*See above.*) That is especially true where the context of the May 2018 Order, and the reasoning for its conclusion, hinged on the significance of party specificity, that the respondent Property Owners were not parties to the litigation between the Lytle Trust the Association.¹⁵

¹⁵ *Ozuna*, 706 N.E.2d at 989 (Ill. App. 1998) (an injunction should be reasonably construed and read as a whole); *Old Homestead Bread Co.*, 117 P.2d at 1009–10 (“too ascertain the meaning of any part of an injunction, the entire injunction must be looked to; and its language, like that of all other instruments, must have a reasonable construction with reference to the subject about which it is employed”); *Arbuckle*, 134 So.2d at 741 (the “injunction itself, read in view of the relief sought and the issues made in the case before the court which rendered it, and the injunction will not be given a wider scope than is warranted by such construction”); *Citizens Against Range Expansion*, 289 P.3d at 37 (an injunction would not prohibit acts not within its terms as reasonably construed).

B. The District Court Did Not Undertake the Type of Analysis That Warrants Deference to Discretion

The district court’s expansion of the injunction to include new actions and a new beneficiary did not rest on any particular fact-finding, application of complicated legal factors—*e.g.*, whether the Association would be acting on its implied powers or ultra vires, *etc.*¹⁶—or any other inquiry beyond its “any means any” analysis, which would call for this Court’s deference. A district court’s failure to exercise its discretion constitutes an abuse of that discretion. *Massey v. Sunrise Hosp.*, 102 Nev. 367, 724 P.2d 208 (1986); *See also*, Rex A. Jemison, A Practical Guide to Judicial Discretion, 2 Nevada Civil Practice Manual § 29.05. An abuse of discretion can be an error of law in determining the factors that govern discretion. *Franklin v. Bartsas Realty, Inc.*, 95 Nev. 559, 598 P.2d 1147 (1979).

¹⁶ *See, generally, In re McGill’s Est.*, 52 Nev. 35, 280 P. 321, 323 (1929) (“It is settled law that a corporation has implied powers to do all acts that may be necessary to enable it to exercise the powers expressly conferred.”); *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 643, 137 P.3d 1171, 1185 (2006), *abrogated on other grounds by Chur v. Eighth Jud. Dist. Ct.*, 136 Nev. 68, 458 P.3d 336 (2020), (“a corporate act is said to be ultra vires when it goes beyond the powers allowed by state law or the articles of incorporation,” which entails a fact-specific inquiry).

The Lytle Trust set out numerous legal justifications that the Association might rely upon to gather the funds from its members to satisfy a judgment debt. (4 App. 857-64.) It referred the Court to instances in the past where the association had levied assessments to pay Association obligations and even recorded liens upon failure to pay. (4 App. 864-69.) None of that factored into the district court's orders, which were quite detailed and explicit in explaining the simplicity of the court's rationale. Put simply, the district court expanded injunction does not hang on any findings of fact or weighing of factors to which this Court would defer.

CONCLUSION

For the forgoing reasons, the district court's order holding the Lytle Trust in contempt, as well as the expanded injunction apparent in that order and the subsequent order on the Lytle Trust's motion for clarification, must be vacated.

Dated this 15th day of March, 2021.

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CERTIFICATE OF COMPLIANCE

1. I certify that this brief complies with the formatting, typeface, and type-style requirements of NRAP 32(a)(4)–(6) because it was prepared in Microsoft Word 2010 with a proportionally spaced typeface in 14-point, double-spaced Century Schoolbook font.

2. I certify that this brief complies with the type-volume limitations of NRAP 29(e) because it contains 7,518 words.

3. I certify that I have read this brief, that it is not frivolous or interposed for any improper purpose, and that it complies with all applicable rules of appellate procedure, including NRAP 28(e). I understand that if it does not, I may be subject to sanctions.

Dated this 15th day of March, 2021.

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I certify that on March 15, 2021, I submitted the foregoing
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 Marie Sandoval Gegen, as trustees of
 the Raynaldo G. and Evelyn A.
 Sandoval Joint Living and Devolution
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IN THE SUPREME COURT OF THE STATE OF NEVADA

TRUDI LEE LYTLE and JOHN ALLEN LYTLE, as
trustees of THE LYTLE TRUST,

Appellants,

vs.

SEPTEMBER TRUST, DATED MARCH 23, 1972;
GERRY R. ZOBRIST AND JOLIN G. ZOBRIST, as
trustees of THE GERRY R. ZOBRIST AND JOLIN
G. ZOBRIST FAMILY TRUST; RAYNALDO G.
SANDOVAL AND JULIE MARIE SANDOVAL
GEGEN, as trustees of THE RAYNALDO G. AND
EVELYN A. SANDOVAL JOINT LIVING AND
DEVOLUTION TRUST DATED MAY 27, 1992; and
DENNIS A. GEGEN AND JULIE S. GEGEN,
husband and wife, as joint tenants,

Respondents.

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Clerk of Supreme Court

Appeal from the Eighth Judicial District Court, Clark County, Nevada
The Honorable Timothy C. Williams, District Court Judge
District Court Case Nos. A-16-747800-C and A-17-765372-C

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NRAP 26.1 DISCLOSURE

In accordance with NRAP 26.1, the undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualifications or recusal.

Respondents September Trust dated March 23, 1972, Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust Dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint Tenants (collectively the “Respondents”), are individuals and trusts that are not affiliated with any corporation.

Wesley J. Smith and Laura J. Wolff at Christensen James & Martin, Chtd. represent the Respondents in the district court and before this Court.

Dated this 14th day of May 2021. CHRISTENSEN JAMES & MARTIN, CHTD.

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JURISDICTIONAL STATEMENT

The Lytle Trust appeals from a post-judgment order of contempt entered by the district court on May 22, 2020 (“Contempt Order”). The Court does not have jurisdiction over this appeal because there is no rule or statute which authorizes a direct appeal from an order of contempt.¹ See NRAP 3A(b); NRS 22. Contempt orders may only be challenged by an original writ petition pursuant to NRS 34, not by direct appeal. *Pengilly v. Rancho Santa Fe Homeowners Ass’n*, 116 Nev. 646, 647, 5 P.3d 569, 569 (2000). As this Court explained:

Writ petitions are also more suitable vehicles for review of contempt orders. Particularly where the purpose of the contempt order is to coerce compliance with the district court’s orders, it appears preferable for the district court to be able to modify its orders to meet changing circumstances.

Id., 116 Nev. at 649-50, 5 P.3d at 571. The Court further held that “the standard of review in a writ petition is appropriate to the review of a contempt order.” *Id.*

The Lytle Trust concedes that “simple contempt orders generally are not appealable and instead must be contested via writ petition,” but argues that because the subject Contempt Order allegedly expands the May 2018 injunction Order this Court has jurisdiction pursuant to NRAP 3A(b)(8) for “a special order entered after

¹ Respondents previously filed a Motion to Dismiss for lack of jurisdiction. The Motion to Dismiss was denied because the jurisdictional issue appeared to be intertwined with the merits of the appeal. See Order dated January 8, 2021 (Doc. 21-00621). The Court stated that the “parties may raise the jurisdictional issue in their briefs, if warranted.” *Id.*

final judgment” or pursuant to NRAP 3A(b)(3) as an order granting “new” injunctive relief.² Appellant’s Br. ix-xi.

NRAP 3A(b)(8) is not a catchall to overcome the presumption that the Contempt Order must be contested via writ petition. A “special order” under NRAP 3A(b)(8) “must be an order affecting the rights of some party to the action, growing out of the judgment previously entered.” *Gumm v. Mainor*, 118 Nev. 912, 913–14, 59 P.3d 1220, 1221 (2002). In *Gumm*, “The district court’s order deprived *Gumm* of part of his judgment and distributed that money to others who claimed a right to it.” 118 Nev. at 919, 59 P.3d at 1225. The Order being appealed affected “*Gumm*’s right to receive his judgment proceeds” in a way the original order had not. *Id.* Alternatively, an order which merely clarifies or defines the party’s rights under prior orders does not qualify as a special order. *See Vaile v. Porsboll*, 128 Nev. 27, 32, 268 P.3d 1272, 1276 (2012); *see also Detwiler v. Baker Boyer Nat’l Bank*, 462 P.3d 254 (Table), 2020 WL 2214148, *2 (Nev. 2020) (unpublished) (order awarding attorney fees as a sanction unrelated to the judgment between the parties did not qualify as a special order appealable under NRAP 3A(b)(8));

² This allegation regarding “new injunctive” relief was not in the Lytle Trust’s docketing statement. Although NRAP 14(a)(4) provides that the docketing statement “is not binding on the [appellate] court and the parties’ briefs will determine the final issues on appeal”, when “attorneys do not take seriously their obligations under NRAP 14 to properly and conscientiously complete the docketing statement, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate.” *KDI Sylvan Pools, Inc. v. Workman*, 107 Nev. 340, 810 P.2d 1217 (1991). “We issue this opinion so that all state bar members are on notice that sanctions may result if the docketing statement is not fully and accurately completed, with all required documentation attached.” *Moran v. Bonneville Square Assoc.*, 117 Nev. 525, 25 P.3d 898 (2001).

Brazell v. Brazell, 133 Nev. 989, 393 P.3d 1075 (Table), 2017 WL 1855087 *1 (May 2017) (unpublished) (order of contempt was a mere enforcement of appellant's obligations under the divorce decree and did not qualify as a special order appealable under NRAP 3A(b)(8); *Saiter v. Saiter*, 134 Nev. 1006, 416 P.3d 1056 (Table) 2018 WL 2096288, *1 (Nev. 2018) (unpublished) (appeal was dismissed because appellant failed to show how the order affected his rights arising from the final judgment).

“[A]n order modifies the original decree when it actually changes the legal relationship of the parties to the decree.” *Birmingham Fire Fighters Ass’n 117 v. Jefferson Cty.*, 280 F.3d 1289, 1293 (11th Cir. 2002). “[A] district court’s interpretation of an injunction modifies it...only when that interpretation is blatantly or obviously wrong.... [i.e.] the misinterpretation...leaps from the page.” *Id.*; see also *Mikel v. Gourley*, 951 F.2d 166, 168 (8th Cir. 1991) (a “clarification” does not change the parties’ original relationship, but merely restates that relationship in new terms, while a “modification” alters the legal relationship between parties or substantially changes the terms and force of the injunction).

The Contempt Order did not alter or adjust the rights or responsibilities of the parties originally set forth in the Injunction Orders. The Contempt Order merely enforced the substantive relief granted in the May 2018 Order that was sought in the Respondents’ complaint. Therefore, the Contempt Order did not infringe upon, affect, or change the Lytle Trust’s legal or substantive rights. The district court simply took the post-Injunction Order actions of the Lytle Trust and applied the findings of fact and conclusions of law in the May 2018 Order to that

behavior, enforcing the clear requirement that the Lytle Trust not take any action against the Respondents or their properties related to the Rosemere Judgments. The Lytle Trust cannot explain how their effort to have a receiver make assessments on Respondents' properties for the purpose of paying the Rosemere Judgments did not fall within the express prohibition of the Injunction Orders. Therefore, the Contempt Order does not "affect the rights of some party to the action" for purposes of NRAP 3A(b)(8) under the standard stated in *Gumm* and there is no direct appeal right from the Contempt Order. The only proper result is dismissal of this Appeal.³

NRAP 3A(b)(3) provides that "[a]n appeal may be taken from...[a]n order granting or refusing to grant an injunction or dissolving or refusing to dissolve an injunction," but there is no injunction that may be appealed here. *See* NRAP 3A(b)(3). In interpreting NRAP 3A(b)(3), this Court held that "injunctions are governed by NRCP 65, which sets forth the procedure for seeking an injunction and the form that an order granting an injunction must take." *Nelson v. Nelson*, 466 P.3d 1249, 136 Nev. Adv. Op. 36 (2020) (*citing Peck v. Crouser*, 129 Nev. 120, 124, 295 P.3d 586, 588 (2013)).

The only injunctions issued by the district court were contained in the July 2017 Order and the May 2018 Order. Those Orders, including the injunctions

³ The Lytle Trust presents several arguments on the doctrine of laches and issue preclusion with regard to their decision to file an appeal rather than a Writ. Respondents do not address these arguments because they are only applicable if this Appeal is dismissed.

contained therein, were already appealed and affirmed by this Court. *Lytle v. Boulden*, No. 73039, 134 Nev. 975, 432 P.3d 167, 2018 WL 6433005 (Nev. 2018) (Table); *Lytle v. Sept. Tr., Dated Mar. 23, 1972*, No. 76198, 458 P.3d 361, 2020 WL 1033050 (Nev. 2020) (Table)). The law of the case prevented the district court from altering the Injunction Orders in the Contempt Order. *See Hsu v. Cty. of Clark*, 123 Nev. 625, 629, 173 P.3d 724, 728 (2007) (“The doctrine of the law of the case provides that the law or ruling of a first appeal must be followed in all subsequent proceedings, both in the lower court and on any later appeal”).

The Contempt Order does not cite to or even mention Rule 65 or issue “new” injunctive relief in any manner. The Lytle Trust disagrees with the district court’s interpretation of its Injunction Orders, but that does not mean that “new” injunctive relief has been imposed. The Contempt Order did not grant, deny or dissolve an injunction to provide jurisdiction over this appeal under NRAP 3A(b)(3). It merely recognized the obvious—that seeking to collect the Rosemere Judgments from the respondents through the appointment of a receiver violated the district court’s Order, which permanently enjoins the Lytle Trust “from taking any action in the future directly against the Plaintiffs or their properties based upon the Rosemere Litigation...” 3 App. 712:10-19.

Thus, the Contempt Order is not appealable under the clear language of *Pengilly* and does not otherwise qualify as a special order appealable under NRAP 3A(b)(8) or NRAP 3A(b)(3). This Court should not reward the Lytle Trust by effectively granting it a second appeal simply because it chose to cynically and

intentionally violate the district court's May 2018 injunction Order. This Appeal must be dismissed for lack of jurisdiction.

STATEMENT OF THE ISSUE

Whether the district court properly held the Lytle Trust in contempt of the May 2018 Order when, after being permanently enjoined from enforcing the Rosemere Judgments against the Respondents or their properties because the Respondents are not debtors under those Judgments, the Lytle Trust sought to indirectly achieve the same result by requesting appointment of a receiver in a separate case, without informing the receivership court of the July 2017 Order or May 2018 Order, all in an effort to force the limited purpose association to impose special assessments against the Respondents or their properties to pay the Rosemere Judgments.

STATEMENT OF THE CASE

The Lytle Trust's history of circumventing the district court's orders culminated in the entry of the Contempt Order, which is the subject of this Appeal.

The district court explained:

This case has a history, such as the filing of the *lis pendens* against the Boulden Trust and Lamothe Trust properties after the Court had ordered the expungement of the Abstracts of Judgment and continued enforcement of the Abstracts of Judgment against the September Trust, Zobrist Trust, Sandoval Trust, and Gegens' properties after entry of the July 2017 Order, **that demonstrates that the Lytle Trust does not respect this Court's Orders.**

6 App. 1448:1 (emphasis added). A review of the case history and the complete language of the district court's orders demonstrates that the district court did not abuse its discretion when it held the Lytle Trust in contempt.

On July 27, 2017 ("July 2017 Order"),⁴ the district court permanently enjoined the Lytle Trust from taking "any action"⁵ in the future against the [Bouldens or Lamothes]⁶ or their properties" based upon the judgments ("Rosemere Judgments") that the Lytle Trust had obtained against the Rosemere Estates Property Owners Association (the "Association"). 1 App. 72:4-7; 7 App. 1557:6. The district court's injunction was clear enough to this Court when it

⁴ The July 2017 Order has been referred to as the April 2017 Order in prior proceedings because it was originally entered on April 26, 2017 and subsequently modified on July 27, 2017 in a way that is not material to this appeal. 6 App. 1493:8-13; 7 App. 1556 n.1.

⁵ The words "any action" were in the July 2017 Order and May 2018 Order despite the Lytle Trust's argument that they were a new addition in the Contempt Order. Appellants' Br. 31-32.

⁶ Marjorie B. Boulden, Trustee of the Marjorie B. Boulden Trust ("Boulden"), and Linda Lamothe and Jacques Lamothe, Trustees of the Jacques & Linda Lamothe Living Trust ("Lamothe"), were property owners in the Rosemere Subdivision.

stated: “Determining that the Lytles improperly clouded title, the district court ordered the abstracts of judgment expunged from the properties’ titles and entered a permanent injunction enjoining the Lytles from enforcing the judgment or any related abstracts against the Boulden or Lamothe properties.” *Lytle v. Boulden*, 2018 WL 6433005, *1.

An Order entered on May 24, 2018 (“May 2018 Order”) contains nearly identical Findings of Fact, Conclusions of Law, and Orders, including a permanent injunction prohibiting the Lytle Trust from taking “any action” to enforce or collect the Rosemere Judgments from the Respondents or their properties. 3 App. 712:10-19; 7 App. 1558:8-11.

Both the July 2017 Order and the May 2018 Order (which hereinafter may be referred to collectively as “Injunction Orders”) were affirmed by this Court. 7 App. 1556:15, 6 App. 1445:10; *see Lytle v. Boulden*, 2018 WL 6433005; *Lytle v. Sept. Tr.*, 2020 WL 1033050.

Undeterred by the district court’s express prohibition against taking “any action” to enforce or collect the Rosemere Judgments from the Respondents or their properties, the Lytle Trust determined it would try another approach. Two weeks after entry of the May 2018 Order, the Lytle Trust filed a new action (“Receiver Action”) seeking the appointment of a receiver to do the very thing that the Injunction Orders forbade – enforce the Rosemere Judgments against the Respondents’ properties. 6 App. 1450:1-8. The Lytle Trust named the Association as the sole defendant, failed to even mention its related litigation with the Respondents and did not disclose that the Injunction Orders prohibited the Lytle

Trust from seeking payment of the Rosemere Judgments from the property owners or their properties. *Id.* The Lytle Trust made materially false representations to the Receivership Court that the Amended CC&Rs governed and allowed for special assessments to pay the Rosemere Judgments, despite direct language to the contrary in the Rosemere Judgments themselves, the Injunction Orders, and this Court's Orders of Affirmance. 6 App. 1446:8-1447:16.

On December 18, 2019, based on the Lytle Trust's Application and as drafted by the Lytle Trust, an Order Appointing a Receiver of Defendant Rosemere Property Owners Association ("Order Appointing Receiver") was entered in the Receivership Action, which purported to authorize a receiver to collect special assessments from the Respondents to pay the Rosemere Judgments in direct violation of the Injunction Orders. 6 App. 1447:17-25, 1450:1-10. Whereas the Lytle Trust had already obtained all the Association's assets, the primary purpose of the Receivership Action could be nothing other than to enforce the Rosemere Judgments by collecting from the Respondent property owners and their properties through special assessment. 4 App. 820:14-18.

Once they learned of the improper Receiver Action, the Respondents filed a motion for contempt, arguing that the effort to appoint a receiver for the purpose of making assessments against the Respondents and their properties to pay the Rosemere Judgments both directly and indirectly violated the Injunction Orders. 3 App. 736-841. Applying the language of the Injunction Orders to the Lytle Trust's actions, the district court correctly found that the Lytle Trust was in contempt of the Injunction Orders because its actions were merely an indirect attempt to

achieve the same objective the Court had already forbidden – imposing the obligations of the Rosemere Judgments on the property owners. 6 App. 1437-1453. The district court denied the Lytle Trust’s Motion for Clarification, stating that the Injunction Orders were sufficiently clear and that the Contempt Order was a necessary and mandatory result of the Lytle Trust’s actions proscribed by the Injunction Orders. 7 App. 1538:13-20. The Lytle Trust appealed.

STATEMENT OF FACTS

“All of the Court’s decisions in this case, including the May 2018 Order and the Contempt Order, *are based upon the history of this case*”, and “The thrust and focus of all the Court’s decisions in this matter *are based upon the history of this case*, including the April 2017 Order entered 3 years ago.” 7 App. 1556: ¶ 14 (emphasis added); 1557: ¶ 5 (emphasis added). Recounting the case history here, largely ignored by the Lytle Trust, is paramount to understanding the district court’s wise use of discretion in issuing the Contempt Order.

A. The original CC&Rs govern and created a limited purpose association.

Each of the Respondents and the Lytle Trust own one of nine lots in the Rosemere Subdivision (“Subdivision”). 3 App. 705:10-706:3. The properties are subject to and governed by the CC&Rs recorded January 4, 1994 (“CC&Rs”). 3 App. 705:25-27. All property owners, the property owners committee, and any formal association entity must follow the CC&Rs. *Id.*

The obligations imposed and rights granted by the CC&Rs are few. 3 App. 706:10-17; 5 App. 1098 ¶ 3. Among them, property owners “shall on an equal

basis, assume responsibility to maintain any and all off-site improvements which have been installed by Subdivider.” 1 App. 167 at ¶ 19. Property owners also “shall assume responsibility to maintain walls erected by subdivider.” *Id.* at ¶ 20. Paragraph 21 of the CC&Rs calls for the formation of a “property owners committee” to fulfill four express duties: maintain exterior planters; maintain exterior perimeter and frontage walls; maintain the entrance gate; and maintain the private drive and sewer system thereunder. *Id.* at ¶ 21. The cost of this maintenance is to be shared equally among the nine lots. *Id.* at ¶ 21(a).

There is no express assessment right and no express lien right granted to the owners committee or any other entity or individual under the CC&Rs. 1 App. 165-168. The Lytle Trust has admitted that the Association has no power of assessment as a limited purpose association under the CC&Rs. 5 App. 1083:16-19 (“The property owners recognized that the Association did not have powers granted to it other than those granted by the Original CC&Rs. For example, the Association had no power to assess, fine, issue rules and regulations, or undertake other actions commonly reserved for homeowners’ associations”). There are no other duties or obligations imposed on the owners committee or any association entity by the CC&Rs.

Contrary to the Lytle Trust’s assertion, there is no obligation pursuant to the CC&Rs to pay judgments owed by the Association to any other homeowner. Cf. Appellant’s Br. 23. In fact, the property owners committee is not expressly granted the right to sue or be sued, but instead each owner is granted the individual right to enforce the CC&Rs “upon any other owner or owners,” including the right of any

owner to initiate “any appropriate judicial proceeding” against any other owner or owners. 1 App. 168 at ¶ 24. Thus, if any individual had committed an actionable offense against the Lytle Trust, acting in any capacity, the CC&Rs provided a remedy that the Lytle Trust elected not to pursue. Appellant’s Br. 25 (“[T]he Lytle Trust had not availed itself of an appropriate legal mechanism to pursue the Property Owners directly.”).

It is because of these limited rights and obligations that this Court has repeatedly discussed that the Association is a limited purpose association under NRS 116.1201(2)(a). *See Lytle v. Boulden*, 2018 WL 6433005, *2; *Lytle v. Sept. Tr.*, 2020 WL 1033050, *1. Therefore, the statutory powers granted to the Association are expressly limited. *Id.* Like the CC&Rs, NRS 116.1201(2)(a) does not incorporate any power to make special assessments on the property owners to pay judgments against the Association. *See* NRS 116.1201(2)(a) (setting forth enumerated statutes governing).

B. The Amended CC&Rs are void ab initio.

In 1997, the property owners committee formed the Association to hold a bank account to conduct the business enumerated in the CC&Rs. 1 App. 179-182; 4 App. 822:13-16; 5 App. 1076-1079. In 2007, the Association adopted Amended CC&Rs that attempted to greatly expand the Association’s powers and restrict owner rights. 1 App. 89:1-15; 2 App. 393-431; 4 App. 823:20-23. Notably, the Amended CC&Rs would have converted the Association from a limited purpose association to a full-fledged association subject to the entirety of NRS 116. 2 App. 393-431; 3 App. 624; 4 App. 823:20-23. Further, the Amended CC&Rs expressly