IN THE SUPREME COURT OF THE STATE 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,
Real Parties in Interest,
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. 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,
Real Parties in Interest.

No. 84538

ANSWER OF REAL PARTIES IN INTEREST TO PETITION FOR WRIT OF MANDAMUS, OR ALTERNATIVELY, PROHIBITION

WESLEY J. SMITH, ESQ. (SBN 11871)
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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. 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

NRAP 26.1 DISCLOSURE

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 disqualification or recusal.

Real Parties in Interest answering this Petition are 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 ("Gegens") (collectively "Real Parties in Interest"). The Real Parties in Interest are trusts and/or individuals. They have no parent corporation and no publicly held company owns stock in any of them.

Attorneys Kevin B. Christensen, Wesley J. Smith and Laura J. Wolff of the firm Christensen James & Martin, Chtd., have appeared for and represented the Real Parties in Interest throughout this litigation.

Dated this 9th day of June 2022.

CHRISTENSEN JAMES & MARTIN, CHTD.

By: */s/ Wesley J. Smith*
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WHY THE PETITION SHOULD BE DENIED

The district court did not abuse its discretion when it held the Petitioner in contempt of the May 2018 Order. Petitioner's narrow-focused arguments regarding "direct" and "indirect" violations do not save it from the breadth and reach of the May 2018 Order as a whole and the history of the case, which clearly and unequivocally barred any action that would result in collection of the Association judgments from the property owners or their properties. The Petitioner's attempt to circumvent the May 2018 Order by seeking a receiver over the Association for the intent of having the receiver make assessments against the Real Parties in Interest's properties was a clear and obvious violation of the May 2018 Order's injunction language enjoining the Petitioner from "enforcing the [Rosemere] Judgments… against the September Property, Zobrist Property, Sandoval Property or Gegen Property… [and] taking any action in the future directly against the Plaintiffs or their properties…." 3 App. 712:10-19. Because the language and intent of the May 2018 Order was clear and the violation obvious, the contempt order cannot be "an arbitrary or capricious exercise of discretion" or a "manifest abuse of discretion." *See Nalder v. Eighth Judicial Dist. Court of Nev.*, 136 Nev. 200, 201, 462 P.3d 677, 681 (2020); *Pengilly v. Rancho Santa Fe Homeowners Ass'n*, 116 Nev. 646, 650, 5 P.3d 569, 571-72 (2000). The Petition should be denied.

ISSUE PRESENTED

Whether the district court manifestly abused its discretion when it held the Lytle Trust in contempt of the May 2018 Order permanently enjoining the Lytle Trust from enforcing the Rosemere Judgments against the Real Parties in Interest or their properties when the Lytle Trust sought to achieve the same result by seeking appointment of a receiver over the Association for the purpose of having the receiver impose assessments against the Real Parties in Interest's properties to pay the Rosemere Judgments.

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.

The properties in the Rosemere Subdivision 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, focusing on maintenance of minimal common elements (landscape, walls, sewer, street, and gate). 1 App. 167 at ¶¶ 19-21; 3 App. 706:10-17; 5 App. 1098 ¶ 3.

As admitted by the Petitioner, there is no express assessment or lien right granted under the CC&Rs. 1 App. 165-168; 5 App. 1083:16-19. The property owners committee is also not granted the right to sue or be sued, but instead each owner is granted the individual right to enforce the CC&Rs by "any appropriate judicial proceeding" against "any other owner." 1 App. 168 at ¶ 24. If any individual had committed an actionable offense against the Lytle Trust, the CC&Rs supplied a remedy that the Lytle Trust elected not to pursue, as admitted by Petitioner. Petitioner's Br. 27.

It is because of these limited rights and obligations that this Court has repeatedly held that the Rosemere Estates Property Owners Association ("Association") is a limited purpose association ("LPA") under NRS 116.1201(2)(a). *See Lytle v. Boulden*, No. 73039, 134 Nev. 975 (Table), 432 P.3d 167 (Table), 2018 Nev. Unpub. LEXIS 1087 *4 (2018) ("*Boulden*"); *Lytle v. September*, Nos. 76198 & 77007, 458 P.3d 361 (Table), 2020 Nev. Unpub. LEXIS 237, *3 (Nev. 2020) ("*September*"). As an LPA, the statutory powers and obligations granted to and imposed upon the Association are extremely limited. *Id.* Like the CC&Rs, NRS 116.1201(2)(a) did not incorporate any power to make special assessments on the property owners to pay judgments against the Association upon which the Petitioner could have relied for any action relevant to this case. *Id.*

B. <u>The Amended CC&Rs are *void ab initio*.</u>

The Association was formed in 1997 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 (ultimately unsuccessfully) 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 an LPA to a full-fledged association subject to all of NRS 116. 2 App. 393-431; 3 App. 624; 4 App. 823:20-23. The Amended CC&Rs expressly granted the Association: ownership of the common elements (Article 3.1); power to make special assessments against each property to pay judgments (Article 10.2(c)); power to lien each property for assessments and fines (Article 10.3); power to hold individual property owners personally liable for assessments (Article 10.11); and power to take legal action against owners (Article 16). 2 App. 366:6-16, 393-431; 4 App. 826:6-23, 5 App. 1060:11-23. The Amended CC&Rs also granted each property owner a right of action against the Association. 2 App. 427, ¶ 16.1.

However, the Amended CC&Rs were judicially declared void from the beginning, leaving only the original CC&Rs to govern. *See September*, 2020 Nev. Unpub. LEXIS 237, *1-2.

B. <u>The Rosemere Judgments are only against the Association.</u>

The Lytle Trust started a series of lawsuits against the Association related to the Amended CC&Rs, resulting in Judgments against the Association ("Rosemere Judgments") by default or uncontested motion. 1 App. 89:24-91:21, 122:9-125:22; 3 App. 706:4-709:15; 3 App. 574:5-575:16. The Real Parties in Interest were not parties to those actions and the Lytle Trust does not have a judgment against any property owner. Petitioner's Br. 2. Despite this, the Lytle Trust recorded Abstracts of Judgment against the property owners. 3 App. 710:1-23. As explained below, this

Court affirmed that the Lytle Trust's actions were improper. *See Boulden*, 2018 Nev. Unpub. LEXIS 1087; *September*, 2020 Nev. Unpub. LEXIS 237.

C. The July 2017 Order clearly barred the Lytle Trust from *any action* against the Property Owners or their properties to collect the Rosemere Judgments.

Rosemere property owners Boulden and Lamothe filed suit against the Lytle Trust in December 2016 (Case No. A-16-747800-C), to expunge the Rosemere Judgments from their properties and enjoin the collection effort. 1 App. 5-12; 3 App. 708:22-709:3. On July 27, 2017 ("July 2017 Order"),[1] the district court permanently enjoined the Petitioner from taking "any action" against Boulden/Lamothe *or their properties* based upon the Rosemere Judgments. 1 App. 72:4-7; 7 App. 1557:6.

The July 2017 Order[2] included the following findings and conclusions: the property owners were not parties to or debtors of the Rosemere Judgments; the Association is an LPA under NRS 116.1201(2); the Association did not have any powers beyond those of the "property owners committee" designated in the Original

[1] "July 2017 Order" may be used interchangeably with "April 2017 Order" because it was originally entered on April 26, 2017 but subsequently modified on July 27, 2017 in a way that is not material to this petition. 6 App. 1493:8-13; 7 App. 1556 n.1.

[2] Petitioner mentions the July 2017 Order in a footnote stating it "is not at issue in this petition." Petitioner's Br. iv n.1. However, the May 2018 Order cites to the July 2017 Order and contains matching findings and conclusions (3 App. 703-716); this Court affirmed the July 2017 Order in *Boulden* making it law of the case; the Contempt Order incorporates the July 2017 Order and referenced it repeatedly (6 App. 1442:8-1443:24); and the district court held that "[t]he thrust and focus of all the Court's decisions in this matter are based upon the history of this case, including the [July] 2017 Order entered 3 years ago." (7 App. 1557:21-22). It cannot be minimized or ignored.

CC&Rs; the Original CC&Rs provide each homeowner the right to independently enforce the Original CC&Rs against one another; the Amended CC&Rs have no force and effect and are *void ab initio*; the Rosemere Judgments are not against or a debt or obligation of the property owners. 1 App. 67:23-69:23. The July 2017 Order concluded with the following Permanent Injunction:

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

1 App. 72:1-6 (emphasis added).

In summary, the Lytle Trust was permanently enjoined from taking *any action* against Boulden and Lamothe *or their properties*. This Court found the injunction clear. *See Boulden*, 2018 Nev. Unpub. LEXIS 1087, *3 ("the district court…entered a permanent injunction enjoining the Lytles from enforcing the judgment or any related abstracts against the Boulden or Lamothe properties.").[3]

Despite the permanent injunction, the Lytle Trust immediately filed *lis pendens* against the properties. 1 App. 51:24-52:15. Following a motion for contempt, the district court ordered the Lytle Trust to remove the *lis pendens* immediately. 1 App. 52:18-54:4. The district court further enjoined the Lytle Trust

[3] Petitioner's argument that it was "enjoined from *going around* the Association" (Petitioner's Br. at 7-8) has no basis in the text of the injunction. The district court clearly enjoined the Petitioner from taking any action against the property owners and their properties, without any mention of going around the Association.

from "taking recording or enforcing" the Rosemere Judgments "against the Boulden Property or Lamothe Property" or "taking any action in the future against the Plaintiffs, the Lamothe Property, or the Boulden Property based upon the Rosemere Litigation…including but not limited to, filing or recording any court awards, judgments, court orders, liens, abstracts, *lis pendens*, encumbrances, clouding documents, slanderous documents or any other documents or instruments." 1 App. 53:12-23.

The district court found that the Lytle Trust had violated the permanent injunction but did not hold the Lytle Trust in contempt at that time. The district court warned the Lytle Trust to not take any further action based on the Rosemere Judgments against the properties. 1 App. 34:12-35:6. The district court found this case history to be crucial to understanding the scope of the Injunction Orders when it issued the Contempt Order. 6 App. 1354:18-1355:9, 1366:9-1367:4, 1443:8-15, 1448:19-23.

The Lytles appealed the July 2017 Order and this Court affirmed. *Lytle v. Boulden*, 2018 Nev. Unpub. LEXIS 1087. The Court held that "because Boulden and the Lamothes were not parties to the previous litigation and the Association was limited in purpose and not subject to NRS 116.3117's mechanism by which judgments against a homeowners' association may be recorded against properties therein, *Boulden and the Lamothes were not obligated under the Lytle's judgment*." *Id.* at *1 (emphasis added). The Court unequivocally rejected the Lytle Trust's "attempt to piece together a solution that would allow them to enforce a judgment lien against property owners who were not parties to the Lytles' complaint against

Rosemere Estates, and whose property interests had never been subject of any suit." *Id.* at *2.

D. The May 2018 Order is issued to protect the Real Parties in Interest like the July 2017 Order, and is affirmed by this Court.

The Lytle Trust removed the abstracts of judgment against the Boulden and Lamothe properties but refused to do so for the Real Parties in Interest, forcing them to file their own suit against the Lytle Trust. Following consolidation with the Boulden/Lamothe case, summary judgment was granted for the Real Parties in Interest on May 24, 2018 ("May 2018 Order"), including findings, conclusions, and injunctions matching the July 2017 Order. 3 App. 700-716; 7 App. 1558:8-11.[4]

The district court found that seeking to collect the Rosemere Judgments from the Real Parties in Interest or their properties was improper and ordered that the abstracts of judgment be expunged. 3 App. 710:10-712:9. The May 2018 Order included a permanent injunction similar to the July 2017 Order:

> 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.

3 App. 712:10-19 (emphasis added).

[4] The July 2017 Order and May 2018 Order are referred to collectively as the "Injunction Orders."

Each of the findings of fact and conclusions of law contained in the May 2018 Order are essential to understanding the meaning of the injunction language. The district court explained:

> 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, 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.

6 App. 1449:5-10. Although ignored by the Petitioner, the July 2017 Order and its history and relationship to the May 2018 Order informed the district court's decision. 7 App. 1556:1-9, 1557:21-1558:9. The district court explained that "[t]he May 2018 Order referenced the April 2017 Order and borrowed its Findings of Fact and Conclusions of Law." 7 App. 1556:8-9. The district court discussed both Injunction Orders extensively in the Contempt Order (6 App. 1493:8-1494:24) and the Order Denying the Motion for Clarification (7 App. 1556:1-1557:3, 1557:19-1558:9). The district court found that the Injunction Orders clearly prohibited the Petitioner from taking "any action" against the property owners or their properties related to the Rosemere Judgments. 6 App. 1449:19-22; 7 App. 1558:14-15.

This Court affirmed the May 2018 Order. *September*, 2020 Nev. Unpub. LEXIS 237. The Court recited key holdings from its prior decisions related to the Rosemere Judgments and again rejected Petitioner's statutory and equitable arguments. *Id.* at *1-6. The Court explained that the "amended CC&Rs were *void ab initio*, meaning those documents never had any force or effect" and could not be

used as a basis for collecting the judgments against the Real Parties in Interest or extending the express limitations on LPAs under NRS 116.1201(2). *Id.* at *6. Additionally, the Court found that the refusal to remove the abstracts of judgment from the Real Parties in Interest's properties after entry of the July 2017 Order was improper and affirmed an award of fees and costs in favor of the Real Parties in Interest under NRS 18.010(2)(b). *Id.* at *7-8.

E. Petitioner sought a receiver to circumvent the Injunction Orders.

Undeterred by the Injunction Orders, the Lytle Trust devised a plan. *See* Appellant's Br. 5. Only two weeks after entry of the May 2018 Order, the Lytle Trust initiated a new case to seek appointment of a receiver to impose special assessments on the Real Parties in Interest's properties for payment of the Rosemere Judgments. 4 App. 820:3-18, 821:11.

Petitioner withheld material information from the Receivership Court, completely failing to even mention the prior litigation and Injunction Orders. 4 App. 816-832 (Motion for Appointment of Receiver). The district court emphasized this lack of candor:

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

6 App. 1447:12-16. This failure to inform the Receivership Court was a key reason why the district court held Petitioner in contempt of the Injunction Orders. 6 App. 1450:1-8 (emphasis added).

The Lytle Trust also attempted to use the *void ab initio* Amended CC&Rs as authority for the Receiver to make assessments on the Real Parties in Interest's properties to pay the Rosemere Judgments. 6 App. 1447:3-11 (citations omitted); 4 App. 826:4-828:17, 832:1-9. The Lytle Trust made these allegations to the Receivership Court even though it had argued the opposite in the Rosemere Litigation. 5 App. 1059:6-1061:4, 1083:16-17, 1103:14-17 (Lytle Trust arguing that the Association does not have the power to assess fines pursuant to the original CC&Rs). Remarkably, Petitioner continues to argue that the Association has power to make assessments. Petitioner's Br. 6. As previously discussed, the Injunction Orders clearly stated that the Amended CC&Rs were *void ab initio*. The district court found this illegitimate attempt to give the receiver a special assessment power violated the May 2018 Order. 6 App. 1450:11-14.

By intentionally failing to disclose the prior litigation and Injunction Orders and by affirmatively arguing for powers granted in the Amended CC&Rs, which the Lytle Trust knew had been declared *void ab initio*, Petitioner obtained an order from the Receivership Court purporting to grant broad powers to a receiver in excess of those authorized by the original CC&Rs and NRS 116.1201(2) – all for the purpose of compelling the property owners to pay the Rosemere Judgments. 6 App. 1440-1453. The district court found that Petitioner purposefully and deceitfully attempted to have another court do what the district court had forbidden – impose the Rosemere Judgment obligations on the Real Parties in Interest. 6 App. 1446:3-1448:7.

F. Petitioner's direct violations of the Injunction Orders left the court with no alternative but to hold it in contempt.

The Real Parties in Interest argued that the appointment of a receiver to make assessments compelling the Real Parties in Interest to pay the Rosemere Judgments *clearly* and *directly* violated the Injunction Orders. 3 App. 738:19-23 ("direct violations of the permanent injunction"); 3 App. 742:3-4 ("direct violation"); 3 App. 743:17-20 ("clear violation"); 3 App. 745:12-13 ("direct orders…clearly violation"); 3 App. 746:15-17 ("in clear violation"); 3 App. 747:3-5 ("This directly contradicts the May 2018 Order."); 3 App. 748: 20-21 ("unquestionably prohibited by the May 2018 Order from taking any action").

They argued further that they had "established with clear and convincing evidence that the May 2018 Order has been violated. The violations are so direct and intentional, that there cannot possibly be an argument that the Lytle Trust made good faith reasonable efforts to comply with the terms of the permanent injunction and has substantially complied." 3 App. 750:7-12. The district court agreed, finding:

> 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.
>
> 12. The Plaintiffs have demonstrated by clear and convincing evidence that the Lytle Trust violated the clear and specific terms of the permanent injunction found in the May 2018 Order when it initiated an action against the Association that included a prayer for appointment of a receiver, applied for appointment of a receiver, and argued that the Association, through the Receiver, could make special assessments on the Plaintiffs' and other property owners for the purpose of paying the Rosemere Judgments, *all while failing to inform the Receivership Court of this Case, this Court's Orders, or that the Lytle Trust had been enjoined from enforcing the Rosemere Judgments* against the Plaintiffs,

> the Boulden Trust, the Lamothe Trust, and the Dismans, or their properties.
>
> 13. The Lytle Trust's actions, as stated in the Findings of Fact and set forth herein, *directly and indirectly* violated the May 2018 Order.
>
> 14. Any references to the power of assessment exercised by the Association, or the Receiver on behalf of the Association, against the individual homeowners for payment of the Rosemere Judgments in the Order Appointing Receiver, as advocated for and drafted by the Lytle Trust, *directly and indirectly* violates the May 2018 Order.
> ...
> 16. The Lytle Trust has failed to demonstrate *how its actions did not violate the clear and specific terms* of the May 2018 Order.

6 App. 1449:23-1450:17 (emphasis added).

The district court concluded that the Petitioner cannot enforce the Rosemere Judgments against the property owners by having the Association (through a receiver) levy assessments on the property owners' properties. 6 App. 1440-1452. The district court rejected the Petitioner's narrow focus on a single word and contrived interpretation of the Injunction Orders. 7 App. 1557:23-27 ("The broad and the plain meaning of the term 'any action' means any action, whether direct or indirect."). The court explained:

> 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…

6 App. 1449:5-12. Thus, in considering the entirety and history of the Injunction Orders, the district court found that the "Lytle Trust has no judgment creditor rights to try to collect the Rosemere Judgments from the [Real Parties in Interest] in any way, shape, or form." 6 App. 1449:26-28.

In denying Petitioner's motion to clarify, the district court explained that it did not strip Petitioner of its lawful creditor's rights against the Association. 7 App. 1557:5-1558:15. Petitioner may engage in any lawful action that does not result in payment from the property owners - including execution and garnishment of Association property. Petitioner has already made use of those rights. 4 App. 820:14-18 ("the Lytle Trust garnished $2,622.27 from the Association's bank account").

ARGUMENT

The Court should exercise its "absolute discretion" to deny the Petition. *See Div. of Child & Family Servs. v. Eighth Judicial Dist. Court*, 120 Nev. 445, 449, 92 P.3d 1239, 1242 (2004). This court considers whether "judicial economy and sound judicial administration militate for or against issuing the writ." *Hidalgo v. Eighth Judicial Dist. Court*, 124 Nev. 330, 334, 184 P.3d 369, 372-73 (2008). The Court must follow the standard of review applicable to the particular writ petition involved. *In re Water Rights of the Humboldt River*, 118 Nev. 901, 906, 59 P.3d 1226, 1229 (2002).

A writ of mandamus is inappropriate because there has been no manifest abuse of discretion. *See Agwara v. State Bar of Nev.*, 133 Nev. 783, 785, 406 P.3d 488, 491 (2017). A writ of prohibition is also not necessary because there is no act of the

district court beyond its legal authority. *See id*. These standards of review provide the proper level of deference on a contempt order. *Pengilly*, 116 Nev. at 650, 5 P.3d at 572. "Petitioners bear the burden of showing that this court's extraordinary intervention is warranted." *Nev. State Bd. of Architecture, Interior Design & Residential Design v. Eighth Judicial Dist. Court*, 135 Nev. 375, 377, 449 P.3d 1262, 1264 (2019). No such intervention is necessary here and the Writ should be denied.

A. The Injunction Orders clearly and unambiguously prohibited the Petitioner's conduct.

The Contempt Order was based on written, clear, and unambiguous Injunction Orders. *See Div. of Child & Family Servs.*, 120 Nev. at 454-55, 92 P.3d at 1245; *Mack-Manley v. Manley*, 122 Nev. 849, 858, 138 P.3d 525, 532 (2006) (*citing Cunningham v. Eighth Jud. Dist. Ct.*, 102 Nev. 551, 559–60, 729 P.2d 1328, 1333–34 (1986)). An injunction should be read "intelligently and in context." Dan B. Dobbs, *Law of Remedies* § 2.8(7), 220 (2d ed. 1993). "Like any other written instrument, an injunction is to be reasonably construed, as a whole, so as to give effect to the intention of the issuing court." *Norwest Mortgage, Inc. v. Ozuna*, 706 N.E.2d 984, 989 (Ill. App. Ct. 1998); *Pennington v. Employer's Liab. Assur. Corp.*, 520 P.2d 96, 97 (Alaska 1974); *Rodgers v. Williamson*, 489 S.W.2d 558, 560 (Tex. 1973); 1 Freeman, *Judgments* § 76 (5th ed.).

"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) (*quoting* 32 CJ 370, § 624); *see also Arbuckle v. Robinson*, 134 So.2d 737, 741 (Miss. 1961) (*citing* 28 Am.Jur. *Injunctions* § 324) (injunction must be "read in view of the relief sought and the issues made in the case before the court which rendered it."). "Effect must be given not only to that which is expressed, but also to that which is unavoidably and necessarily implied in the judgment or decree." *Winter v. Winter*, 387 N.E.2d 695, 698 (Ill. App. Ct. 1978); *Anderson v. Anderson*, 585 P.2d 938, 944 (Haw. 1978). This Court has looked to the record when an injunction failed to set forth the reasons for its issuance. *See Sowers v. Forest Hills Subdivision*, 129 Nev. 99, 108-09, 294 P.3d 427, 434 (2013).

Petitioner's hyperfocus on single words ("directly") to the exclusion of all others (i.e. "any action") and the history of the case is contrary to these rules. The district court understood these rules and made the correct decision when it stated that "[e]ach 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. As a result of the Findings of Fact and Conclusions of law, 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." 6 App. 1449:5-10.

The Injunction Orders, a combined eighteen pages, set forth detailed findings of fact and conclusions of law leading to clear injunction language. 1 App. 66-72; 3 App. 703-716. It is clear that the Association is an LPA under NRS 116.1201(2) (1 App. 7:17-19; 3 App. 709:20-21), the Amended CC&Rs are *void ab initio* (1 App. 8:23-26; 3 App. 709:24-27), the property owners are not liable for and have no

obligation to pay the Rosemere Judgments (1 App. 8:27-9:7; 3 App. 710:1-9), and "any action" by the Lytle Trust to enforce the Rosemere Judgments against the property owners or their properties or to obtain payment from the property owners for the Rosemere Judgments is forbidden (1 App. 10:23-11:3; 3 App. 712:10-19). The Petitioners either did not read the whole Injunction Orders or deliberately sought to circumvent them, but neither is an excuse for violation of the Orders.

The findings of fact and conclusions of law in the Injunction Orders set forth the historical framework in which the district court issued the injunctions. When the May 2018 Order is read entirely and in context, its meaning is clear and does not support Petitioner's narrow construction. Petitioner was barred from collecting the Rosemere Judgments from the Real Parties in Interest or their properties. By its plain meaning, Petitioner could not take "any action" that would result in the Rosemere Judgments being enforced against the Real Parties in Interest or their properties, including any action that would result in the Real Parties in Interest paying the Rosemere Judgments. The Petitioner's purpose of seeking a receiver to assess the property owners to pay the Rosemere Judgments clearly violated that injunction.

Each word, phrase, and paragraph of the Injunction Orders causally relates to the limitations placed on the Lytle Trust, the powers of the Association, and the protections afforded the property owners. Because the Injunction Orders found that the Amended CC&Rs were *void ab initio*, the original CC&Rs governed, and the Association was an LPA, there was no contractual or statutory grant of a special assessment power that would support the Receiver Action, even if the Injunction Orders did not expressly prohibit "any action."

B. The district court had jurisdiction and was in the best position to interpret its own Orders.

A district court has "inherent power to protect dignity and decency in its proceedings, and to enforce its decrees." *Humboldt River*, 118 Nev. at 906, 59 P.3d at 1229. Because a district court has intimately observed the proceedings and is deeply familiar with the intent of its own orders, it "generally has particular knowledge of whether a person has committed contempt." *Id.*

"District courts have broad equitable power to order appropriate relief in civil contempt proceedings." *S.E.C. v. Hickey*, 322 F.3d 1123, 1128 (9th Cir.), *opinion amended on denial of reh'g*, 335 F.3d 834 (9th Cir. 2003). "Further, courts have the inherent power to prevent injustice and to preserve the integrity of the judicial process...." *Halverson v. Hardcastle*, 123 Nev. 245, 262, 163 P.3d 428, 440 (Nev. 2007).

"Great deference is due the interpretation placed on the terms of an injunctive order by the court who issued and must enforce it." *Alabama Nursing Home Ass'n v. Harris*, 617 F.2d 385, 388 (5th Cir. 1980). "Proper deference" must be given "to the district court's intricate knowledge of the proceedings." *Humboldt River*, 118 Nev. at 907, 59 P.3d at 1229. "Whether a person is guilty of contempt is generally within the particular knowledge of the district court, and the district court's order should not lightly be overturned." *Pengilly*, 116 Nev. at 650, 5 P.3d at 571. Thus, manifest abuse of discretion is the proper standard of review. *Id.*

In *Chorney v. Chorney*, 383 P.2d 859 (Wyo. 1963), the court was tasked with reviewing a contempt order. The court found the trial judge's interpretation of its order to be "quite persuasive" because:

> [I]n final analysis, disposition of the instant case is largely dependent upon the meaning to be given to the terms of the decree. In this we are indeed aided by the trial court. It so happens that the judge rendering the decision here is the same judge who presided at the trial of the divorce case, approved the agreement providing support for the minor daughters, and entered the divorce decree. Under such circumstances his conclusions in the matter are quite persuasive.

Id. at 860–61.

Here, the same judge who issued the Contempt Order presided over this litigation in 2016 when Boulden and Lamothe filed their complaint.[5] When it came time to determine whether the Lytle Trust had violated the Injunction Orders, the district court judge was in the best position to interpret the Orders and make that determination. The district court relied upon the history of this case, the entirety of the Injunction Orders, and this Court's Orders of Affirmance as law of the case. The district court's reasoning is found in the Contempt Order and its Order Denying the Lytle Trusts' Motion for Clarification. 6 App. 1440-1452; 7 App. 1552-1559. The district court also provided substantial explanation during the contempt hearings. 6 App. 1331-1398; 7 App. 1518-1548.

The Petitioner's argument is that the district court could not hold it in contempt because the injunctions did not anticipate or expressly prohibit the

[5] Judge Timothy Williams was initially assigned to this case and entered the July 2017 Order. Judge Mark Bailus presided from approximately January 2018 to December 2018 and entered the May 2018 Order based at least in part on the decision already made by Judge Williams in the July 2017 Order. Judge Williams was reassigned to the case in April 2019.

Petitioner's exact acts. However, a court is not required to anticipate every possible action of a contemnor or expressly enumerate every act that is prohibited. *See, e.g., Mack-Manley v. Manley*, 122 Nev. at 858-859, 138 P.3d at 532 (2006). In *Mack-Manley*, an initial custody order stated: "Neither party shall do anything which may estrange the children from the other parent or impair the natural development of the children's love and respect for the other parent." *.Id.* That language did not expressly prohibit one parent from making bad faith allegations to authorities that the other had abused or neglected the children. *.Id.* However, the Court had no trouble affirming the district court's decision to hold the mother in contempt for doing just that. *.Id.*

It is enough that the district court made broad but clear prohibitions of "any action" against the Real Parties in Interest or their properties related to the Rosemere Judgments. If Petitioner "was unsure as to the applicability of the prior injunction, it could have petitioned the court for a modification or clarification of the order. By in effect making its own determination as to what the injunction meant, [Petitioner] acted at its peril." *Donovan v. Sureway Cleaners*, 656 F.2d 1368, 1373 (9th Cir. 1981) (citing *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 15 (1945)). Petitioner's fundamental disagreement with the Injunction Orders and the district court's interpretation thereof does not mean that the district court committed a manifest abuse of discretion, it merely means that Petitioner acted at its peril. The district court's reading, interpretation, and application of the Injunction Orders was reasonable and this Court should defer to the findings and conclusions reached by the district court.

C. The district court was bound to follow the law of the case.

Pursuant to the law of the case doctrine, "[w]hen an appellate court states a principle or rule of law necessary to a decision, the principle or rule becomes the law of the case and must be followed throughout its subsequent progress, both in the lower court and upon subsequent appeal." *Wickliffe v. Sunrise Hosp.*, 104 Nev. 777, 780, 766 P.2d 1322, 1324 (1988). This doctrine "is designed to ensure judicial consistency and to prevent the reconsideration, during the course of a single continuous lawsuit, of those decisions which are intended to put a particular matter to rest." *U.S. v. Real Prop. Located at Incline Vill.*, 976 F.Supp. 1327, 1353 (D. Nev. 1997).

The district court acknowledged at two different hearings that the court was bound by law of the case and could not change its prior decisions. *See* 7 App. 1538:13-20 ("I can't change that right now.... this is what I ruled as a matter of law in this case…."); 6 App. 1394:22-1395:1 ("There is an appellate history to this case, and so when it comes to Plaintiff's Motion for an Order to Show Cause…, I'm going to grant the motion."). The court expressly acknowledged the Orders of Affirmance in the Contempt Order. 6 App. 1494:15-18; 6 App. 1496:1-6; 6 App. 1498:12-16. Then in denying the Lytle Trust's Motion for Clarification, the district court explained that the Injunction Orders had withstood appellate scrutiny. 7 App. 1556:6-14.

The law of the case doctrine prevents Petitioner from relitigating the Injunction Orders. The district court was not free to enter a contrary ruling because the Injunction Orders were affirmed by this Court. The district court could not permit

actions which would result in the Real Parties in Interest paying the Rosemere Judgments because the Injunction Orders clearly and unequivocally prohibited that result. 3 App. 710:1-9 (the "Rosemere Judgments…are not an obligation or debt owed by the [Real Parties in Interest] to the Lytle Trust."); 3 App. 712:10-19 (prohibiting Petitioner from "enforcing the Judgments…against the [Real Parties in Interest' properties]" or "taking any action in the future directly against the [Real Parties in Interest] or their properties based upon the Rosemere [Judgments].").

In the same way, the district court was not free to allow the Lytle Trust to take any action seeking assessment under the Amended CC&Rs because the Injunction Orders clearly and unequivocally stated that the "Amended CC&Rs are invalid and have no force and effect and were declared *void ab initio*." 3 App. 709:25-27. The Original CC&Rs do not provide an assessment power. The district court could not allow assessment under NRS 116 because the Injunction Orders clearly and unequivocally stated that the Association is an LPA. 3 App. 709:20-24. As such, there is no statutory special assessment power to pay judgments that is granted to LPAs under NRS 116.1201(2).

The district court explained that "[t]he Court made its intentions clear at the April 22, 2020 [contempt] 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.'" 7 App. 1557:5-7; *see also* 7 App. 1557:21-1558:11 (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. 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.").

In summary, the May 2018 Order clearly precluded any action against the Real Parties in Interest or their properties related to the Rosemere Judgments. A special assessment here would be an action against the Real Parties in Interest's properties. *See, e.g., In re Foster*, 435 B.R. 650, 662 (B.A.P. 9th Cir. 2010) (discussing how association assessments run with the land), *abrogated on other grounds by Goudelock v. Sixty-01 Ass'n of Apartment Owners*, 895 F.3d 633 (9th Cir. 2018) (distinguishing *in rem* actions from *in personam* obligations expressly granted by CC&Rs); *Carawan v. Barnett*, 197 N.C. 511, 512, 149 S.E. 740, 741 (1929) (An action to collect an unpaid assessment is strictly a proceeding in rem and there is no personal liability against the owners of the land for the assessments levied against it). The May 2018 Order precludes action by the Association *vis-à-vis* the property owners to pay the Rosemere Judgments because it expressly forbade enforcement of the Rosemere Judgment against the properties. Petitioners, fully aware of the Injunction Orders, started the Receiver Action, did not inform the Receivership Court of the Injunction Orders, and sought to cause the Association, through a receiver, to assess the Real Parties in Interest's properties to pay the Rosemere Judgments. On these facts, the district court had no choice but to enforce its Injunction Orders and hold the Lytle Trust in contempt.

D. <u>The Petitioner still has judgment creditor rights.</u>

The Lytle Trust exclaims that the practical effect of the Contempt Order is to void the Rosemere Judgments and strip Petitioner of all judgment creditor rights. Petitioner's Br. 25. However, Petitioner concedes that the Contempt Order does not actually "strip the Lytle Trust of any collection rights against the judgment-debtor Association." Petitioner's Br. 16; *see also* 7 App. 1524:18-22 ("it appears the Court has answered that question in the negative; that no, the Court has not stripped the Lytle Trust of all of its judgment creditor rights"). In fact, the Lytle Trust has availed itself of execution and garnishment, clearing the Association's bank account years ago. 4 App. 820:16. In reality, Petitioner is upset with two problems of its own making which cannot be remedied here.

First, Petitioner desperately wants to collect the Rosemere Judgments from the Real Parties in Interest, its true prey. The CC&Rs expressly grant a right of action between property owners as the *exclusive* remedy for violations of the CC&Rs (1 App. 168 at ¶ 24), which Petitioner concedes that it has not pursued. Appellant's Br. 27 ("[T]he Lytle Trust had not used an appropriate legal mechanism to pursue the Property Owners directly."). To allow indirect collection would circumvent this express remedy which Petitioner has not elected and subject the Real Parties in Interest to liability without due process of law.

Second, Petitioner is upset that the Association does not have assets to pay the Rosemere Judgments, a common problem encountered by many creditors. But lack of money to collect does not mean that the creditor has no *rights*. A debtor with no

assets does not magically allow the creditor to collect its judgment from someone else.

Many years ago, the Lytle Trust elected its remedies and was successful in obtaining the relief it sought against the Association, including judgments declaring the Amended CC&Rs *void ab initio* and the Association an LPA. Perhaps Petitioner is disappointed by the legal effect of its own strategy, but that does not justify a writ petition or continued waste of judicial resources.

CONCLUSION

The Injunction Orders, as affirmed by this Court, clearly and unambiguously precluded the Lytle Trust from enforcing the Rosemere Judgments against the Real Parties in Interest or their properties. Seeking a receiver to make assessments on the Real Parties in Interest's properties to pay the Rosemere Judgments clearly violated this prohibition. Based on these facts, the district court did not manifestly abuse its discretion when it found Petitioner in contempt. The Petition should be denied.

Dated this 9th day of June 2022.

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CERTIFICATE OF COMPLIANCE

1. I hereby 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 365 with a proportionally spaced typeface, Times New Roman, size 14-point font.

2. I further certify that this brief complies with the type-volume limitations of NRAP 21(d) and NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 6,900 words.

3. I hereby certify under NRAP 28.2(a) that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e). I understand that I may be subject to sanctions if it does not.

DATED this 9th day of June 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on this date, the 9th day of June 2022, I submitted the foregoing **ANSWER OF REAL PARTIES IN INTEREST TO PETITION FOR WRIT OF MANDAMUS, OR ALTERNATIVELY, PROHIBITION** 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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