Case No. 84538

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. 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,

Real Parties in Interest.

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REPLY ON PETITION FOR WRIT OF MANDAMUS OR, ALTERNATIVELY, PROHIBITION

District Court Case Nos. A-16-747800-C and A-17-765372-C

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The district court's May 2018 order did not, and could not have, enjoined the Lytle Trust from enforcing its judgment against the judgment-debtor Association through a receivership. By finding the Lytle Trust in contempt for pursuing a lawful collection remedy, the district court sanctioned the Lytle Trust for appropriate conduct it never enjoined, either expressly or even by reasonable implication.

The real-parties-in-interest Association members ("Property Owners") wholly ignore the central issue in this petition regarding the separate legal identity of the Association—to wit, that the Lytle Trust's lawful execution of its judgments against the judgment-debtor Association does not constitute an improper (veil-piercing) *execution* directly against them merely because the Association may take actions to pay the judgments against it that indirectly *affect* them. They have no answer.

Instead, they justify the contempt order with a faulty assumption that even the Association itself lacks authority to levy assessments against them to pay the Association's obligation to the Lytle Trust. That is not true and, more importantly, it is beside the point. The issue

here is whether the district court's injunction ever precluded the Lytle Trust from executing against the judgment-debtor Association by seeking appointment of a receiver and encouraging the receiver to exercise whatever powers the Association might have internally to collect funds from its members to satisfy its financial obligations, including judgments against it. The ongoing receivership case is the proper forum to litigate what powers the Association may or may not have to issue such assessments; the question should not be bootstrapped into this case for *post hoc* rationalization of the contempt order. The Lytle Trust therefore asks this Court to issue a writ compelling the district court to vacate the contempt order.

I.

THE DISTRICT COURT ABUSED ITS DISCRETION BY HOLDING THE LYTLE TRUST IN CONTEMPT

The Lytle Trust reasonably believed that it was complying with the district court's May 2018 order when it sought a receivership over the Association. The district court's order enjoined the Lytle Trust "from taking any action in the future directly against the [Property Owners[1]]

[1] Again, neither the Dismans nor their predecessors the Bouldens

or their properties" based on the judgments against the Association. (3 App. 712.) The Lytle Trust understood that the injunction denied it the ability to recover directly from the Property Owners for the judgments previously entered against the Association, so it instead sought a receivership over the Association to allow the Association to pursue its own legal avenues to satisfy the judgments. For this, the district court held the Lytle Trust in contempt, clarifying that when the injunction said "any action" it meant "any action, whether direct or indirect" that could result in the Property Owners paying toward the judgment. (7 App. 1557.)

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were a party to the May 2018 order and it was therefore clear error for the district court to find that the Lytle Trust was in contempt as it relates to any action against the Dismans. *See* Pet. at 9 n.8. The Dismans had no interest in enforcement of the May 2018 order because they were not parties to it, and they should not have been joined in the action and do not have standing in this writ proceeding. *See* NRS 12.130; NRCP 24; NRAP 3a. While the Dismans claim that the finding of contempt for the May 2018 order "necessarily involves a violation of the July 2017 Order" that they were party to, the district court expressly noted it did not find the Lytle Trust in contempt of the 2017 order. *See* 6 App. 1451; 7 App. 1557.

A. The Only Reasonable Interpretation of the May 2018 Order is that it Prevented Any Action Directly Against the Property Owners to Collect the Judgment Against the Association

The district court unreasonably interpreted the language in its May 2018 order to hold the Lytle Trust in contempt. The Property Owners assert that the Lytle Trust focuses too narrowly on the word "directly" instead of the phrase "any action," and fails to read the injunction order as a whole. *See, e.g.*, Answering brief filed by real parties in interest September Trust, dated March 23, 1972, *et al*. (hereinafter, "Sept. Trust AB") at 29. But if "any action" really meant "any action, whether direct or indirect," then the injunction would read like this: "[T]he Lytle Trust is permanently enjoined from taking *[any action, whether direct or indirect]* 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.) This head-spinning interpretation suggests that the district court's order enjoined the Lytle Trust from taking indirect action directly against the Property Owners. The Lytle Trust could not have known that when the district court enjoined any action "directly" against the Property Owners that it also meant the opposite, and that any action "indirectly" against the

property owners was enjoined as well. *See Div. of Child & Fam. Servs. v. Eighth Jud. Dist. Ct.*, 120 Nev. 445, 454, 92 P.3d 1239, 1245 (2004) ("The need for clarity and lack of ambiguity are especially acute in the contempt context.").

The district court's "direct or indirect" interpretation also ignores that "action" is a term with legal significance, especially in the context of collecting a debt. *See, e.g.*, NRS 40.430(6)(a) (providing, in the context of the one-action rule for collecting on a secured debt, that "an 'action' does not include any act or proceeding . . . [t]o appoint a receiver for, or obtain possession of, any real or personal collateral for the debt"); *see also* NRS 11.190 (setting forth the periods of limitation for various "action[s]"). "An action is a legal prosecution by a party complainant against a party defendant, to obtain the judgment of the court in relation to some rights claimed to be secured, or some remedy claimed to be given by law to the party complaining." *Haley v. Eureka County Bank*, 21 Nev. 127, 26 P. 64, 67 (1891). An "action" requires two parties in opposing positions seeking adjudication from the court. *See State v. Yellow Jacket Silver Min. Co.*, 14 Nev. 220, 244 (1879) ("Every action is based upon some primary right by the plaintiff, and upon a duty resting

upon the defendant corresponding to such right."). The most reasonable interpretation of "action," then, is what the Lytle Trust describes in plain English as seeking "direct" recovery from the Property Owners for the judgment against the Association. In fact, the May 2018 order expressly limits the type of action enjoined to those that are "directly against" the Property Owners. (3 App. 712.)

If the meaning of "action" was as broad and plain as the district court and the Property Owners now assert, it would not be necessary for the court to explain its meaning by adding modifiers like "direct or indirect," *see* 7 App. 1557 (order denying clarification of contempt order), or to say action is prevented "in any way, shape, or form," *see* 6 App. 1449 (contempt order). In reality, by interpreting "action" to also include steps taken that might *indirectly* affect the Property Owners, the district court changed the legal understanding of "action." It also ignored that the injunction only expressly prohibited actions "directly against" the Property Owners. The May 2018 order therefore only clearly and unambiguously enjoins the Lytle Trust from taking any action directly against the Property Owners to collect the judgments against the Association.

B. The Lytle Trust Did Not Take Any Action Directly Against the Property Owners to Collect the Judgment Against the Association

Put succinctly, the appointment of a receiver over the Association was not an action directly against the Property Owners. To conclude that the Lytle Trust violated the May 2018 order, the district court had to either improperly conflate the Property Owners with the Association, or improperly conflate the Lytle Trust with the receiver, or both. *See* Sept. Trust AB 35–36 (citing to the district court's contempt order, 7 App. 1557, for the proposition that the district court "stripped the Lytle Trust of their ability and right to enforce those judgments vis-à-vis the homeowners in this case"). But each are independent from each other. Notwithstanding substantial argument in the writ petition regarding the separate legal identities between the Association and its members, i.e., the Property Owners, the answering briefs disregard this issue.

The Lytle Trust, as judgment creditor, asked a court to appoint a receiver over the judgment-debtor Association to (among other things) enforce the judgment against the Association.[2] *See* NRS Chapter 32.

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[2] Actually, only a small portion of the application for appointment of a receiver had to do with efforts to satisfy the judgment. Only two sentences of the 10-page Order Appointing Receiver were associated

The receiver, acting for the court and on behalf of the Association (not the Lytle Trust), then could seek to impose and collect assessments against the Property Owners to satisfy the judgments against the Association. *See* NRS 32.175 (defining "Receiver" as "a person appointed by the court as the court's agent, and subject to the court's direction"). At no point after issuance of the May 2018 order did the Lytle Trust bring an action against the Property Owners to hold them liable for the Rosemere Judgments.

The Lytle Trust is not seeking to hold the Property Owners *liable* for the Association's judgments, which is what the May 2018 order prohibited. Rather, the Association itself, acting through the district court's agent (the receiver), is now seeking to satisfy the Association's obligations by looking to its members to the extent of its authority to do so. While that may *affect* the Property Owners as members of the Association, it is materially distinct from the Lytle Trust executing their judgments against them—in the same way that piercing a

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with satisfying the judgment. The receivership was critical to make the association functional, to administrate association affairs despite personal acrimony.

corporate veil to execute a judgment directly against shareholders, members, directors, etc., is different from any internal consequence a judgment may cause those people by way of a capital call, lost dividends, diminishment of share value, etc. After all, the reason the May 2018 order issued was because the Lytle Trust had presumptively engaged in the self-help of executing its judgments directly against the Association members' properties (without an order piercing the Association's corporate veil), not because the judgment-debtor Association necessarily lacked power to raise funds itself from its members to satisfy a judgment against it.

Thus, the receivership is a proper legal remedy that was not foreclosed under a plain reading of the district court's May 2018 order. Accordingly, the district court abused its discretion by holding the Lytle Trust in contempt despite the Lytle Trust's reasonable interpretation of the May 2018 order. Indeed, the Lytle Trust's interpretation was not just reasonable, it was the ***only*** reasonable interpretation of the injunction, because the district court had no legal authority to prevent the Lytle Trust from exercising lawful remedies to collect the judgments against the Association. *See Cunningham v. Eighth Judicial Dist. Ct.*,

102 Nev. 551, 559, 729 P.2d 1328, 1333 (1986) (finding of contempt must be based on a "lawful order").

C. By Holding the Lytle Trust in Contempt, the District Court is Preventing the Lytle Trust From Pursuing Lawful Remedies to Collect the Judgments That Were Not at Issue in the May 2018 Order

The May 2018 order did not limit the manner in which the Lytle Trust could collect the judgments directly from the Association—much less clearly and unambiguously. *See Mack-Manley v. Manley*, 122 Nev. 849, 858, 138 P.3d 525, 532 (2006) ("An order on which a judgment of contempt is based must be clear and unambiguous, and must spell out the details of the compliance in clear, specific and unambiguous terms so that the person will readily know exactly what duties or obligations are imposed."). Nor could the injunction have done so, as the Association was not even a party to the injunction action. Nonetheless, the Property Owners argue that the Lytle Trust relies on "narrow-focused arguments regarding 'direct' and 'indirect' violations" instead of "the breadth and reach of the May 2018 Order as a whole and the history of the case . . . ."." (Sept. Trust AB at 1.) The Property Owners suggest that the district court saw through the Lytle Trust's effort to

"circumvent the May 2018 Order." *Id.* This argument is a tacit concession that the May 2018 order did not preclude the subject course of action by any clear and unambiguous directive.

Notably, the law should provide for skepticism, not deference, when a judge's contempt order is based on something other than a violation of a clear and unambiguous directive in a written order. *Cf., e.g.*, *Detwiler v. Eighth Jud. Dist. Ct.*, 137 Nev. Adv. Op. 18, 486 P.3d 710, 717 (2021) (noting that the peremptory strike statute for contempt "recognizes that there is at least some potential for the appearance of bias when a judge tries an alleged contemnor for contempt of *that very judge*"); *Southwest Gas Corp. v. Flintkote Co.*, 99 Nev. 127, 131, 659 P.2d 861, 864 (1983).

And while the district court and the Property Owners may have been annoyed by the Lytle Trust's attempts to collect on the judgments, the context behind the injunction does not provide the meaning the Property Owners and district court now attribute to it. The litigation underlying the May 2018 order was about whether the Rosemere judgments could be enforced directly against the Property Owners based on NRS 116.3117 or other equitable principles involving common interest communities. *See Lytle v. Boulden*, Docket No. 73039 (Order of

Affirmance, December 4, 2018) (summarizing the district court's injunction as "enjoining the Lytles from enforcing the judgment or any related abstracts against the Boulden or Lamothe properties"); *Lytle v. September Trust¸* Docket No. 76198 (Order of Affirmance, March 2, 2020) (addressing "whether the Lytles could rely on NRS 116.3117 to record abstracts of judgment against the individual properties in Rosemere."). If the district court intended to go a step further and strip the Lytle Trust of all legal remedies against the Association that might ultimately end in the Property Owners indirectly paying for the judgment, it certainly did not do so clearly and unambiguously. If it had, the Lytle Trust would have had the opportunity to challenge that order as unlawful in the previous appeals.

Instead, the earlier litigation focused on the Lytle Trust's inability to collect the Rosemere judgments *directly* from the Property Owners because those judgments were entered against the Association. This Court agreed with the district court that there was no legal basis to do so. *See Lytle v. Boulden*, Docket No. 73039 (Order of Affirmance, December 4, 2018); *Lytle v. September Trust¸* Docket No. 76198 (Order of Affirmance, March 2, 2020). In this case before the Court now,

however, there is a legal basis for the Lytle Trust to collect its judgments against the Association from the Association, through a receivership. Specifically, Nevada statutes authorize a receiver to force the Association to act within its authority to collect assessments to pay the judgment. *See infra Section D.* Requiring the Association to act within its authority to collect from the Property Owners is not the type of action directly against the Property Owners that the parties and this Court previously contemplated when litigating the May 2018 order. So even though the courts have found that the Lytle Trust has no authority to collect the Rosemere judgments directly from the Property Owners, the Lytle Trust maintains the ability to collect the judgments from the proper judgment-debtor Association. And the May 2018 order cannot be deemed to strip the judgment-debtor of any right the Association retains to call on its members to contribute to the Association's obligations—just as an order denying a motion to pierce a corporate veil would not somehow result in the automatic immunization of shareholders, officers, members, etc., of a judgment-debtor corporation from *internal* ramifications of the corporation's judgment obligations.

D. A Receivership is a Lawful Manner to Collect the Judgment Against the Association

The Property Owners' defense of the contempt order relies on the faulty assumption that the Lytle Trust circumvented the injunction because there is no legal basis for a receiver to impose and collect assessments against them in the name of the Association. *See* Sept. Trust AB at 20. In reality, the Order Appointing Receiver simply authorized the receiver to exercise powers the Association already possesses and has a long history of exercising (by some of these very property owners when they controlled the Association as board members).

1. The Lytle Trust Reasonably Believes That the Association Has the Power to Make Assessments Under NRS Chapter 82 as a Nonprofit Corporation

The Property Owners refer to the "property owners' committee" and suggest that the Association's powers are no broader than those originally vested in the committee. (Sept. Trust AB at 2–3.) However, what started as an informal "property owners' committee" under the CC&Rs in 1994, became a formal nonprofit corporation under NRS Chapter 82 in 1997. The Property Owners' arguments ignore that the

Association is an NRS 82 nonprofit corporation.

In 1997, the property owners unanimously approved formalizing the committee as an NRS 82 nonprofit corporation, named the Rosemere Estates Property Owners Association ("Association"). *See* 2 App. 391. Like the property owners' committee, the Association has been deemed "a limited purpose association under NRS 116.1201." *Id.*; *Lytle v. September Trust*¸ Docket No. 76198 (Order of Affirmance, March 2, 2020). Thus, while the Association has all the powers vested in the property owners' committee under the CC&Rs, and all the powers vested in limited purpose associations by NRS 116, its powers do not end there. Whether intended or not, the Association also has all the duties, rights, powers, and privileges of an NRS 82 nonprofit corporation.[3]

NRS 82.131 sets forth various powers vested in all NRS 82

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[3] The Property Owners suggest that when "the Amended CC&Rs were judicially declared void from the beginning," such "[left] only the original CC&Rs to govern." (Sept. Trust AB at 4.) However, such disregards the many additional powers vested in the Association (1) as an NRS 82 nonprofit corporation, (2) by those parts of NRS 116 applicable to limited purpose associations, and (3) as discussed *infra*, implied by necessity.

nonprofit corporations, including the power of assessment: "Subject to such limitations, if any, as may be contained in its articles, . . . every [nonprofit] corporation may: . . . 5. *Levy dues, assessments, and fees*." NRS 82.131(5) (emphasis added). The Association's articles do not limit the power to assess. (2 App. 391.) Thus, the Association has possessed the power of assessment since its incorporation in 1997.[4] It also possessed that power since 1994 under the CC&Rs.

2. The Lytle Trust Reasonably Believes That the Association Also Has the Power to Assess Under the Original CC&Rs

The Property Owners wrongly suggest that the Association had no assessment power under the CC&Rs. The CC&Rs provide: "A breach or violation of these CC&R's . . . *or any liens established hereunder* shall

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[4] That the Association has all *powers* vested in nonprofit corporations by NRS 82 is manifest when it is considered that the Association is also burdened with all the *duties* imposed on nonprofit corporations by NRS 82. For example, neither the original CC&Rs nor NRS 116, both of which are applicable to the Association, absolve the Association of its obligations as a Nevada nonprofit corporation to comply with such duties as (1) those imposed by NRS 82.136 precluding the issuance of stock or being formed for pecuniary gain, (2) keeping the records required by NRS 82.181, (3) providing the Secretary of State with the information required by NRS 82.183, (4) allowing inspection of corporate records as required by NRS 82.186, (5) etc.

not defeat or render invalid or modify in any way the lien of any mortgage or deed of trust . . . ." (1 App. 165 (CC&Rs, last preamble paragraph before §1) (emphasis added).) Although the Property Owners have argued that the reference to "liens established hereunder" regards a lender's mortgage or deed of trust, common sense leads to the conclusion that a lien "established hereunder"—meaning under the CC&Rs—is different than the independently referenced "lien of any mortgage of deed of trust." By definition, a lien of a mortgage or deed of trust is created by the mortgage or deed of trust, not the CC&Rs.

Notably, however, the CC&Rs do not otherwise reference the creation of a lien. That power is implied. For example, the CC&Rs expressly obligate all property owners to equally share the costs for things like maintaining the landscaping, exterior perimeter wall, and entrance gate. (1 App. 167 (§ 21(a), (b), (c)).) Logically, the revenue to pay these and the Association's other debts must be generated through an owner assessment and, if an owner does not pay the assessment, the power to lien is implied. Otherwise, the CC&R's reference to "liens established hereunder" is meaningless. *See Solid v. Eighth Judicial Dist. Ct.*, 133 Nev. 118, 124, 393 P.3d 666, 672 (2017) ("A basic rule of

contract interpretation is that every word must be given effect if at all possible.") (quoting *Bielar v. Washoe Health Sys. Inc.*, 129 Nev. 459, 465, 306 P.3d 360, 364 (2013)).

In short, the Association's power to impose assessments is not just expressed in NRS 82.131(5), it is also implied in the CC&Rs. And, even if not implied in the CC&Rs, the assessment power is implied as a matter of law by necessity.

This Court has repeatedly relied on Section 6 ("Common-Interest Communities")[5] of the RESTATEMENT (THIRD) OF PROPERTIES: SERVITUDES (2000) ("Restatement Servitudes"), including to find implied powers when not expressed by either NRS 116 or the CC&Rs. *See e.g.*, *Artemis Exploration Co. v. Ruby Lake Estate HOA*, 135 Nev. 366, 449 P.3d 1256, 1260 (2019) (applying Restatement Servitudes § 6.2); *Double Diamond v. Second Judicial Dist. Ct.*, 131 Nev. 557, 354 P.3d 641 (2015) (relying upon Restatement Servitudes § 6.19); *Beazer Homes Holding Corp. v. Eighth Judicial Dist. Ct.*, 128 Nev. 723, 291 P.3d 128 (2012)

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[5] "[A] limited-purpose association [is] a type of common-interest community." *Bank of New York Mellon v. Imagination North Landscaping Maintenance Ass'n*, 2019 WL 1383261, at *4 (D. Nev. 2019).

(quoting Restatement Servitudes § 6.11 cmt. a with approval); *D.R. Horton, Inc. v. Eighth Judicial Dist. Ct.*, 125 Nev. 449, 215 P.3d 697 (2009) (quoting Restatement Servitudes § 6.11 with approval).

Artemis Exploration, *supra,* is instructive. There, one issue was whether the subject common-interest community could assess its members when the governing document "did not expressly state that [the association's] residents would be responsible for paying assessments . . . ." 135 Nev. at 367, 449 P.3d at 1257. This Court resolved the issue by relying on the Restatement Servitudes § 6.2: "An implied obligation may also be found where the declaration . . . fails to include a mechanism for providing the funds necessary to carry out [the association's] functions." *Artemis*, 135 Nev. at 372, 449 P.3d at 1260. Based on the Restatement, this Court found "an implied payment obligation." *Id.*

Similarly, here, the assessment power is necessary to provide funds to the Association to carry out its functions—the Association has no other source of revenue since it does not sell a product or a service. Therefore, even if the assessment power were not found to be implied in the CC&Rs, the power is implied as a matter of necessity under the

Restatement Servitudes.[6]

Ultimately, not only does the Association have the implied power to impose assessments, it also has a history of actually imposing and collecting assessments, recording liens against those who did not pay the assessments, and threatening foreclosure. The Property Owners' suggestion that the Association lacked the power to assess its members and enforce those assessments through liens disregards this history. *See* 4 App. 864-868 (describing the history). The Association therefore has always possessed the power to impose assessments, first by implication when the CC&Rs were recorded in 1994, and then by NRS

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[6] *See also,* Restatement Servitudes § 6.4 ("In addition to the powers granted by statute [NRS 116] and the governing documents [CC&Rs], a common-interest community has the powers reasonably necessary to manage the common property, administer the servitude regime, and carry out other functions set forth in the declaration."); § 6.5(1) ("(a) a common-interest community has the power to raise the funds reasonably necessary to carry out its functions by levying assessments against the individually owned property in the community . . . .; (b) assessments . . . are secured by a lien against the individually owned properties."); § 6.5, cmt a ("The rules stated in this section supplement the powers granted to the association by statute and the governing documents."). Indeed, "[u]nder the rule stated in this section, the power to raise funds reasonably necessary to carry out the functions of a common-interest community will be implied if not expressly granted by the declaration or by statute." *Id.* at § 6.5 cmt b.

82.131(5) when the Association incorporated in 1997. This power is confirmed through the Association's history of imposing and collecting assessments.[7]

So when the Lytle Trust sought and obtained an Order Appointing Receiver over the Association and the order expressly vested the Receiver with the power to impose assessments, it did not enable the Receiver to do what the Association could not do on its own. To the contrary, the Association can and did exercise the assessment power as a matter of contract (the CC&Rs), statute (NRS 82), and implied right (Restatement Servitudes). The Order Appointing Receiver merely identified powers already available to the Association, which were also

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[7] A recent amendment to NRS 116.1201(2)(a)(3)(V), effective May 27, 2021, makes the inherent and implied power even more clear. The legislature added what is now NRS 116.1201(2)(a)(3)(V). That new provision says that limited purpose associations "[s]hall comply with the provisions of: . . (V) NRS 116.3116 to 116.31168, inclusive." NRS 116.3116 to 116.31668 sets forth the procedures for liens against units for assessment and for foreclosure of assessment liens. Thus, by virtue of this new amendment, limited purpose associations ("LPAs") now must be deemed to have the power to impose assessments, to create liens when assessments are not paid, and to foreclose those liens (otherwise, what purpose is there to requiring LPAs to comply with these procedures if they do not have the substantive power contemplated by those procedures).

available to the Receiver.

Accordingly, the district court abused its discretion by holding the Lytle Trust in contempt for seeking and obtaining an order that expressly enabled the Receiver to do what the Association itself could do, and for years had done. Moreover, even if the Lytle Trust were incorrect about the scope of the Receiver's power or if the Property Owners are otherwise challenging the Association's authority to impose and collect assessments, the receivership action would be the appropriate forum to make those arguments. Not a contempt order.[8]

E. "Law of the Case" is Not Applicable Here

Invoking the law-of-the-case doctrine only begs the question. Of course, the May 2018 order is law of the case as far as it goes. The question is whether the May 2018 order does "clearly prohibit" the Lytle's receivership action against the Association. *Pengilly v. Rancho*

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[8] The contempt order was especially inappropriate in a proceeding where the judgment-debtor Association was not even a party. The district court's order indirectly diminishes the Association's rights and privileges vis-à-vis its members to satisfy its obligation to the judgment-creditor Lytle Trust. Yet the district court had no jurisdiction over the Association. *Cf. Young v. Nevada Title Co.*, 103 Nev. 436, 442, 744 P.2d 902, 905 (1987) ("A court does not have jurisdiction to enter judgment for or against one who is not a party to the action.").

Santa Fe Homeowners, 116 Nev. 646, 647, 5 P.3d 569, 569 (2000) ("A writ of mandamus is available to control a manifest abuse of discretion—for example, when the order purportedly violated does not clearly prohibit the conduct engaged in by the contemnor."); *see also Mack-Manley v. Manley*, 122 Nev. 849, 858, 138 P.3d 525, 532 (2006) ("An order on which a judgment of contempt is based must be clear and unambiguous, and must spell out the details of the compliance in clear, specific and unambiguous terms so that the person will readily know exactly what duties or obligations are imposed."). In other words, the question is not whether the May 2018 order is enforceable, but rather what it precludes.

As explained in the writ petition and above, the May 2018 order does not preclude this lawful method of executing against the Association, or even encouraging the receiver of the Association to exercise *whatever power the Association may have* to raise funds from its members to satisfy judgments against it. The May 2018 order correctly precluded the judgment-creditor Lytle Trust only from executing their judgments "directly" against non-parties. (7 App. 1660.) And that makes sense in retrospect considering this Court's ruling that

NRS 116.3117 does not apply to this type of association. After all, absent a court order piercing a corporate veil, no judgment creditor may disregard the form of a corporate judgment creditor by skipping past proper execution on the entity and resorting to the self-help of executing on the shareholders' or members' assets. But an order precluding such self-help would not prevent the judgment-debtor entity itself from exercising whatever rights it may have to raise funds internally from those members. Here again, the answering briefs simply ignore this essential distinction arising from the separate legal identities.

F. On the Unique Facts of This Case, the District Court (Judge Williams) Was Not in the Best Position to Interpret Judge Bailus's May 2018 Order

The Property Owners rely on a maxim that a district court is in the best position to interpret its own orders. (Sept. Trust AB at 18.) Indeed, the Property Owners correctly note the rationale for this rule: "a district court has intimately observed the proceedings and is deeply familiar with the intent of its own orders." *Id.* However, in arguing such, the Property Owners forget that Judge Bailus issued the May 2018 order, but it was Judge Williams who, years later, construed that order and held the Lytle Trust in contempt. Even the case cited by the

Property Owners is distinguished on this circumstance:

> [I]n the 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.

Chorney v. Chorney, 383 P.2d 859, 860-61 (Wyo. 1963) (emphasis added), cited and quoted (Sept. Trust AB at 19.)

In short, the only order the Lytle Trust was found to have violated was issued by a different judge than the one who held them in contempt. The general maxim has no application here.

G. The Lytle Trust Effectively Has No Judgment Creditor Rights

The Property Owners try to minimize the Contempt Order's effect on the Lytle Trust by suggesting the Lytle Trust "still has judgment creditor rights." (Sept. Trust AB at 24.) Tellingly, however, the Property Owners limit the Lytle Trust's judgment creditor rights, as did the district court, to only those that "do[] not result in payment from the property owners." (Sept. Trust AB at 14.)

The problem with the Property Owners' argument and the district court's ruling is that *every* judgment creditor right will result in payment from the property owners since the only source of revenue the Association has is from the property owners. The funds to pay the electrical bill for the Association's entrance gate comes from the property owners. The funds to pay the water bill for the Association's common landscaping comes from the property owners. Indeed, the funds to pay any and every Association obligation must come from the property owners. Thus, every judgment creditor right exercised by the Lytle Trust will impact and ultimately be paid by the property owners. However, ultimate payment by the property owners is not direct action by the Lytle Trust against the property owners. For example, when NV Energy sends a power bill to the Association, such is action by NV Energy against the Association—no one thinks of it as action by NV Energy against the property owners.

In short, action by the Lytle Trust to collect its judgment from the Association is action by a judgment creditor against the judgment debtor, even if the judgment debtor Association must look to its member property owners for payment. However, the Property Owners condemn

and the district court broadly interprets as contempt all actions by the Lytle Trust that have even an indirect impact upon the property owners. (Sept. Trust AB at 24, "indirect collection" not permitted.) As such, the Contempt Order effectively stripped the Lytle Trust of all judgment creditor rights and thereby placed one Association creditor (the Lytle Trust) in a disadvantage that no other Association creditor has. NV Energy, Las Vegas Valley Water District, the landscape maintenance contractors, other hypothetical judgment creditors, etc., can all pursue collection of their bills from the Association, even though such will directly impact the property owners, but the Lytle Trust cannot. The Contempt Order effectively rendered the Lytle Trust's judgment meaningless and uncollectable, not because the Association has no money (it certainly has sufficient funds to pay the ongoing utility and maintenance bills each and every month), but because the Lytle Trust cannot take any action without being held in contempt again.

II.

RESPONSE TO DISMAN'S ADDITIONAL ARGUMENTS

Although Disman is affected only by the April 2017 order and not the May 2018 order, and even though the district court did not find any

violation of the April 2017 order, the Dismans submitted a brief as "real parties in interest"—they are not. *See* footnote 1, *supra*. Nevertheless, in an abundance of caution, the Lytle Trust will address in summary fashion two points raised by the Dismans.

First, the Dismans contend "[t]The district court determined the Lytle Trust's actions to be violative of its orders . . . ." (Answering brief filed by real parties in interest Robert Z. Disman and Yvonne A. Disman (hereinafter, "Disman AB") at 2.) This suggestion that the district court found the Lytle Trust violated multiple "orders" is incorrect. The district court ruled the Lytle Trust violated one order—the May 2018 order—and not the April 2017 order, which is the only order the Dismans are affected by. (7 App. 1557.) ("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.").

Second, they emphasize that they "joined in the Contempt Motion, and by virtue of the joinder and subsequent Contempt Order which granted not only the Contempt Motion but also the joinder, are proper parties to this petition." (Disman AB at 2.) While the Dismans joined

the Property Owners' contempt motion below, that motion expressly regarded only the May 2018 order. The Dismans could have joined the Property Owners' contempt motion *and* expanded it to include consideration of the Lytle Trust's actions in context of the April 2017 order, but they did not.

CONCLUSION

For the foregoing reasons, the contempt order must be vacated, as must the subsequent order clarifying it, as well as an order awarding attorney fees predicated on that contempt order (currently on appeal in case 81689).

Dated this 7th day of July, 2022.

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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 32(a)(7)(A)(ii) because it contains 5,980.

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 7th day of July, 2022.

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CERTIFICATE OF SERVICE

I certify that on July 7, 2022, I submitted the foregoing "Reply on Petition for Writ of Mandamus or, Alternatively, Prohibition" for filing *via* the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

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I further certify that I caused a copy of this document to be served via United States mail, postage prepaid, at Las Vegas, Nevada to the following:

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DISTRICT COURT JUDGE – DEPT. 16
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Respondent

/s/ Jessie M. Helm
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